



NOTICE OF COUNCIL MEETING

STUDY SESSION

TELECONFERENCE (Open to the Public)

August 16, 2021

6:30 p.m.

TELECONFERENCE/ELECTRONIC PARTICIPATION PROCEDURES

Members of the Aurora City Council will participate in the August 16, 2021 Study Session 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:

View or listen live to the Study Session

Live streamed at www.auroraTV.org
Cable Channels 8 and 880 in Aurora
Call: 855.695.3475

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, August 16, 2021 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



REVISED AGENDA

Study Session of the
Aurora City Council

Monday, August 16, 2021

6:30 p.m.

VIRTUAL MEETING

City of Aurora, Colorado
15151 E Alameda Parkway

Pages

1. ITEMS FROM THE MAYOR

1.a. Mayor's Update

1.b. Issue Update

2. CONSENT CALENDAR

2.a. **An Ordinance organizing the Windler No.1 BID; election of Directors and approving the 2021 Operating Plan and Budget** 4

Cesarina Dancy, Development Project Manager, Office of Development Assistance/ Brian Rulla, Assistant City Attorney

2.b. **An Ordinance organizing the Windler No.2 BID; election of Directors and approving the 2021 Operating Plan and Budget** 46

Cesarina Dancy, Development Project Manager, Office of Development Assistance/ Brian Rulla, Assistant City Attorney

2.c. **Consideration to appoint (3) three members to the Parks & Recreation Advisory Board** 88

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

2.d. **Consideration to appoint one member to the Immigrant and Refugee Commission** 97

Ricardo Gambetta, Manager, Office of International & Immigrants Affairs/Dave Lathers, Senior Assistant Attorney

- 2.e. Resolution Approving the Intergovernmental Agreement between the City of Aurora and Colorado Department of Transportation (CDOT) for Havana Street Transit Improvements** 102

Carlie Campuzano, Traffic Manager / Michelle Gardner, Senior Assistant City Attorney

3. ITEMS FROM THE POLICY COMMITTEES

- 3.a. Arapahoe County Open Spaces Sales and Use Tax** 192

Luke Palmisano, Intergovernmental Relations Manager/Rachel Allen, Client Group Manager

Outside Speakers: Jeff Baker, Arapahoe County Commissioner and Bill Holen, Arapahoe County Commissioner

Estimated time: 15 min.

- 3.b. Resolution to Enter Lease-Purchase Agreement for Software Renewal** 220

Scott Newman, Chief Information Officer/Kim Skaggs, Assistant City Attorney

Estimated time: 15 min.

- 3.c. A Resolution to Approve the Aesthetic Enhancements for the Nine Mile Pedestrian Bridge** 242

Roberta Bloom, Public Art Supervisor / Tim Joyce, Assistant City Attorney

Estimated time: 15 min.

- 3.d. Proposal for New Climate Action Committee** 307

Jeffrey Moore, Oil & Gas Division Manager /Ian Best, Assistant City Attorney

Estimated time: 20 min.

4. ITEMS FROM CITY THE MANAGER

- *4.a. CP21 Report** 315

Jason Batchelor, Deputy City Manager/Daniel L. Brotzman, City Attorney

Estimated time: 45 min.

4.b. City Council IT Support Expansion 478

Scott Newman, Chief Information Officer / Kim Skaggs, Assistant City Attorney

Estimated time: 15 min.

4.c. Capital Infrastructure Master Plan (Transportation) – Public Works 481

Cindy Colip, Public Works Director/Michelle Gardner, Sr. Assistant City Attorney

Estimated time: 40 min.

4.d. ARPA Community Engagement Update 508

Charise Canales, Community Engagement Manager / Tim Joyce, Assistant City Attorney

Estimated time: 10 min.

5. ITEMS FROM THE CITY COUNCIL

5.a. Amendments to the Campaign Finance Ordinance 517

Sponsor: Council Member Marcano / Rachel Allen, Client Group Manager, City Attorney's Office

Estimated time: 20 min.

5.b. Ballot Question Changing the Eligibility for Registered Electors to Run for Office 553

Sponsor: Council Member Gruber

Staff: Kadee Rodriguez, City Clerk/Rachel Allen, Client Group Manager

Estimated time: 20 min.

6. CALL-UPS OF COUNCIL POLICY COMMITTEE ITEMS

7. MISCELLANEOUS ITEMS

8. ITEMS REMOVED FROM THE AGENDA, IF ANY



CITY OF AURORA

Council Agenda Commentary

Item Title: An Ordinance of the City Council of the City of Aurora, Colorado, organizing the Windler No. 1 Business Improvement District; providing for an election of the Board of Directors of the District; and approving the 2021 Operating Plan and Budget for the Di

Item Initiator: Cesarina Dancy, Development Project Manager, Office of Development Assistance

Staff Source/Legal Source: Cesarina Dancy, Development Project Manager, Office of Development Assistance/ Brian Rulla, Assistant City Attorney

Outside Speaker:

Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
- Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Management & Finance

Policy Committee Date: 7/27/2021

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

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

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

The City Council for the City of Aurora approved a Service Plan for WH Metropolitan District No. 1 and a Service Plan for WH Metropolitan District No. 2 on August 30, 2004. WH Metropolitan District No. 2 subsequently changed its name to Windler Homestead Metropolitan District. The City Council approved an Amended and Restated Service Plan for WH Metropolitan District No. 1 and an Amended and Restated Service Plan for Windler Homestead Metropolitan District on June 28, 2021. WH Metropolitan District No. 1 and GVP Windler, LLC have requested the City Council approve a Second Amended and Restated Service Plan for WH Metropolitan District No. 1 together with the Consolidated Service Plan for WH Metropolitan District Nos. 2-10 at a public hearing on August 2, 2021.

Metropolitan Districts are used throughout the city to assist in the financing of public improvements. However, Metropolitan Districts (MDs) are subject to certain restrictions that limit projects, especially those that include commercial development, which may require a wide array of public improvements and amenities. In such cases having a Business Improvement District (BID) along with the MD offers several advantages. BIDs unlike MDs can provide marketing and advocacy services, may offer additional flexibility related to types of public improvements it can fund and allows for the imposition of special assessments that can be tailored to the types of businesses (see petitioners letter attached).

Pursuant to the provisions of the Business Improvement District Act of Colorado Revised Statutes, the property owner, GVP Windler LLC is petitioning to organize the Windler Business Improvement District No. 1.

Per Colorado State Statute approval for creation of a BID must be given by the governing body of the municipality if the City Council finds that:

- The petition has been signed and presented in conformity with state statute;
- The allegations of the petition are true; and
- The types of services or improvements to be provided by the district are those that best satisfy the purposes set forth in the state statute, then the City Council shall, by ordinance declare the district organized.

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

The petition for the proposed Windler Business Improvement District No. 1 and the proposed Initial Operating Plan and Budget are attached. The petition states that the initial services and improvements to be furnished by the BID include economic development services, district identity/ image enhancement and advocacy on behalf of business and property owners within the districts. The petitions also state that the initial services and improvements will be funded by a mill levy on commercial property not to be greater than 50 mills.

The Operating Plan and Budget anticipates the initial maximum debt authorization for the District to be \$100,000,000. The initial budget advanced by the developer for the year ending December 31, 2021 is \$50,000 and is included as Exhibit B of the Operating Plan and Budget.

The BID may be used to fund and construct public improvements in place of the MD. Therefore, an Intergovernmental Agreement (IGA) between the City and the BID is also being proposed (attached). The IGA includes language from the city's MD model service plan regarding imposition of the ARI Mill Levy (or payment in lieu) for areas of the BID that are not also within the MD. This will ensure that the city's intent for provision of regional infrastructure through the imposition of the Aurora Regional Improvements mill levy (ARI) is being met for this project.

City Council will appoint the initial members of the Board of Directors. This appointment is based on the recommendation of the petitioners. The members must be qualified electors of the proposed District. After this initial appointment, the new Board of Directors will address subsequent elections to the Board within the requirements set by City Council and State law.

QUESTIONS FOR COUNCIL

Does Council wish to move this item to the August 23, 2021 Regular Meeting?

LEGAL COMMENTS

The City Council is vested with the jurisdiction to create and establish business improvement districts within the boundaries of the City. §31-25-1204, C.R.S. If, following a public hearing, the City Council finds that: (i) an organizational petition has been signed and presented in conformity with state statute; (ii) the allegations of the petition are true; and (iii) the types of services or improvements to be provided by the district are those that best satisfy the purposes set forth in state statute, then the City Council shall, by ordinance, declare the district organized. §31-25-1207(5), C.R.S.

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)

(Rulla)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain:

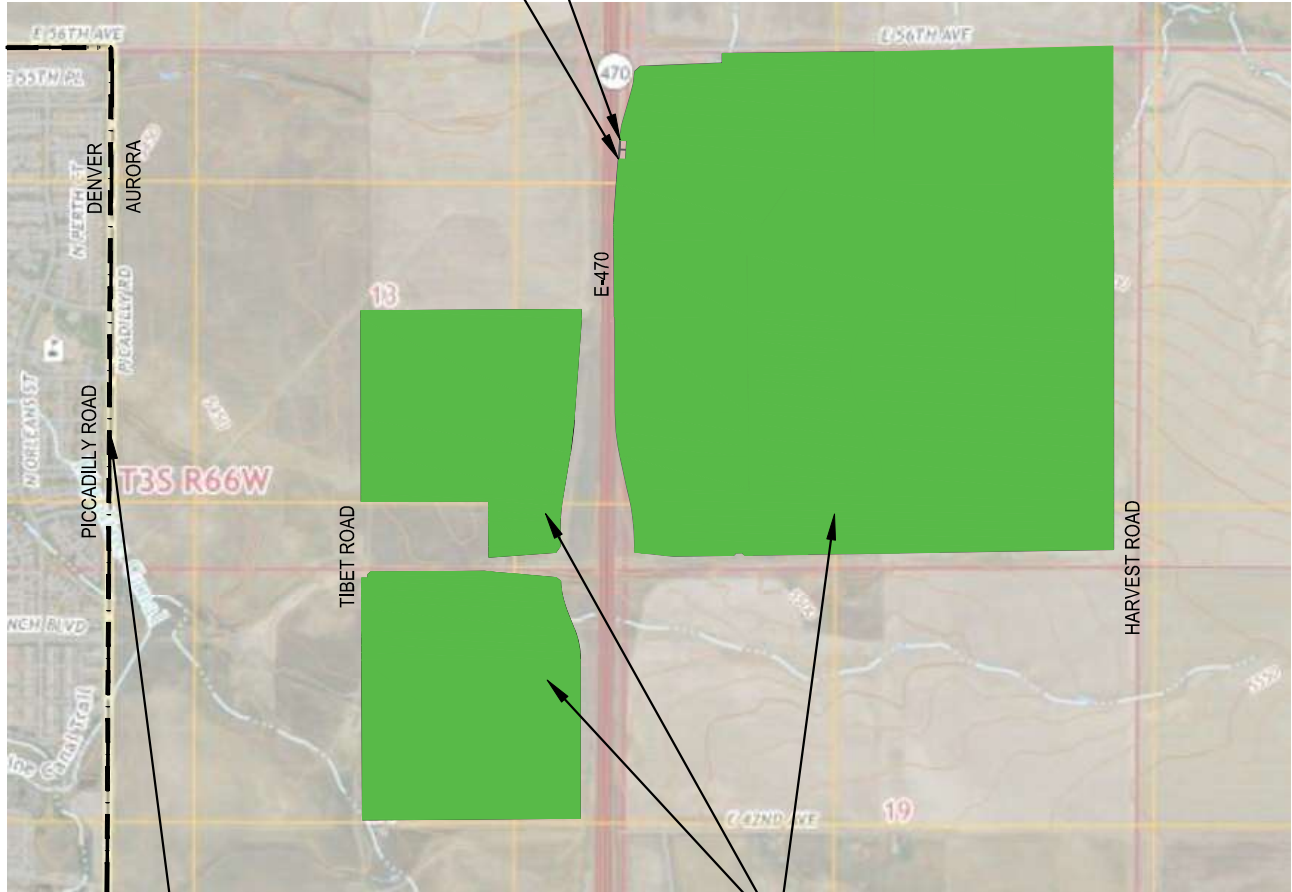
PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: : Formation of the Business Improvement Districts will obligate the property owners to an additional mill levy that may be approved by the district board.

WINDLER BUSINESS
IMPROVEMENT
DISTRICT NO. 1

WINDLER BUSINESS
IMPROVEMENT
DISTRICT NO. 2



AURORA / DENVER
CITY LIMIT

WINDLER PROJECT



SCALE: 1" = 2000'



WINDLER BUSINESS IMPROVEMENT DISTRICT
AURORA VICINITY MAP
EXHIBIT B

DATE: 7/15/2021

SHEET: 1 OF 1

**PETITION FOR THE ORGANIZATION OF THE
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
(BID)**

Petitioner, GVP Windler, LLC (“**Petitioner**”), as owner of one hundred percent (100%) of the taxable real or personal property in the service area of the proposed Windler Business Improvement District No. 1 (the “**District**”) hereby petitions the City Council of the City of Aurora (the “**City**”) for the organization of the District in accordance with the provisions of the Business Improvement District Act, §§ 31-25-1201, *et seq.*, C.R.S.

In support of this petition, Petitioner states as follows:

- 1) The name of the proposed district shall be “Windler Business Improvement District No. 1.”
- 2) The service area of the District will consist of the area described in **Exhibit A** hereto. The boundaries of the District include all properties within the service area perimeter which are classified as commercial property as defined in § 31-25-1203(2), C.R.S.
- 3) The services and improvements to be provided include any services and improvements authorized by the Business Improvement District Act together with all duties and functions authorized by said Act. The initial services and improvements to be furnished by the District include *Economic Development Services* (including new and existing business support, business attraction and retention, consumer marketing and promotions, business improvement district ratepayer communications and special events), *District Identity and Image Enhancement* (including improvements such as banners, signage, streetscape design and/or implementation, public art and other special projects) and *Advocacy* on behalf of business and property owners within the District (including advocacy for planning and development policies and issues that affect service area of the District, strengthening ongoing relationships with adjacent neighborhoods, the City of Aurora, Colorado Department of Transportation, and Regional Transportation District, and seeking grants and other funding to leverage the District’s assessments for projects and improvements).
- 4) The commercial property owners of the proposed district request that the City, after public notice and hearing, designate the territory within the proposed district as a location for new business or commercial development under § 31-25-1203(10), C.R.S.
- 5) The services, facilities, and improvements to be provided by the District are not intended to duplicate or supplant the services, facilities and improvements provided by the City of Aurora within the proposed district boundaries. The District is being created to provide enhanced and otherwise unavailable services and improvements within its boundaries.

- 6) The initial services and improvements to be provided by the District will be funded by a mill levy. By law, any property that is within the District boundary that is classified by the county assessor for property tax purposes as residential or agricultural is not subject to the revenue raising powers of the District and will not be assessed by the District. The mil levy shall not be greater than 50 mills on commercial property within the BID boundary.

The mill levy will be collected by the Adams County Treasurer or other appropriate entity in a timely fashion in order for the District programs to be funded and operational beginning as early as January 2022.

The District may utilize other revenue sources authorized by law, including rates, fees, charges, or differing forms of special assessments as provided by law, or public improvement fees all as set forth in the annual operating plan, as it may be amended from time to time (“**Operating Plan**”), and as submitted to the City in accordance with § 31-25-1211, C.R.S.

- 7) Three persons who represent Petitioner and who have power to enter into agreements relating to the organization of the BID:

Christopher H. Fellows
Dustin Anderson
Timothy O’Connor

- 8) Petitioner owns one hundred percent (100%) of the real or personal property in the service area of the proposed district as shown on the assessor rolls of the County of Adams and owns at least fifty percent (50%) of the acreage in the proposed District.
- 9) If requested by the City, Petitioner will execute a bond or provide a cash deposit in an amount sufficient, as determined by the City, to cover all municipal expenses connected with organizational proceedings in case the organization of the District is not effected. Additionally, if at any time during the organizational process the City determines that the amount of the initially requested bond or cash deposit is not sufficient to cover such costs, it may require the execution of an additional bond or the deposit of additional cash, in an amount determined by the City. Petitioner acknowledge that failure to file such initial or additional bond or deposit within the time fixed, which shall not be less than ten (10) days, will result in dismissal of the Petition.

WHEREFORE, Petitioner respectfully requests the City approve the organization of Windler Business Improvement District No. 1, and approve the 2021 Operating Plan and Budget for the District submitted with this Petition. The initial Board of Directors of the District is to be elected at the election to be held on November 2, 2021 and thereafter at regular elections pursuant to the laws of the State of Colorado and the Operating Plan.

[end of text-signatures on following sheets]

[end of text-signatures on following sheets]

**WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
PETITION**

**WARNING
IT IS AGAINST THE LAW:**

For anyone to sign this Petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to knowingly sign the Petition when not eligible to do so. Do not sign this Petition unless you (or the entity you are signing for) own real or personal property in the proposed district. Do not sign this Petition unless you have read or have had read to you the Petition in its entirety and understand its meaning.

Printed Name of Property Owner/Petitioner:

GVP Windler, LLC, a Delaware limited liability company

By: GVP Alberta Windler, LLC, a Delaware limited liability company
Its: Sole Member

By: Alberta Windler Investor, LLC, a Colorado limited liability company
Its: Operating Member

By: Alberta Windler Management, LLC, a Colorado limited liability
company
Its: Manager


By: Donald G. Provost
Its: Manager

Street address and/or description of taxable property located in the proposed Windler Business Improvement District No. 1 represented by the above signature:

See Exhibit A

***Your signature must be witnessed by a Notary Public unless you sign in front of a
Petition Circulator***

Notarization:

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

The foregoing petition signature was subscribed or acknowledged before me this 12 day of July, 2021 by Donald G. Provost as Manager of Alberta Windler Management, LLC.



Michelle Sanchez
Notary Public

SEAL

My commission expires: Jun 11, 2025

AFFIDAVIT OF AUTHORITY

Required if record title to property is held by a Corporation, Partnership, LLC, LLP or any other entity that is not a natural person

If property owner of record is a Corporation or Limited Liability Company (LLC), complete the following affidavit.

I, Donald G. Provost, do solemnly swear or affirm that I hold the following office with GVP Windler, LLC, the record owner of the property within the service area of the proposed Windler Business Improvement District No. 1 represented by and described on the foregoing Petition, that I signed the Petition for the formation of said district on behalf of the owner of said property, and that I am authorized to sign the Petition on behalf of the said owner.

GVP Windler, LLC, a Delaware limited liability company

By: GVP Alberta Windler, LLC, a Delaware limited liability company
Its: Sole Member

By: Alberta Windler Investor, LLC, a Colorado limited liability company
Its: Operating Member

By: Alberta Windler Management, LLC, a Colorado limited liability company
Its: Manager



By: Donald G. Provost
Its: Manager

Your signature must be notarized by a Notary Public unless you sign this Petition before a Petition Circulator.

Notarization:

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

The foregoing Petition signature was subscribed or acknowledged before me this 12 day of July, 2021 by Donald G. Provost as Manager of Alberta Windler Management, LLC.

Michelle Sanchez
Notary Public

SEAL



My commission expires: June 11, 2025

EXHIBIT A

**DESCRIPTION OF PROPERTY TO BE INCLUDED INTO
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1**

NW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST 6th P.M.
----CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO----

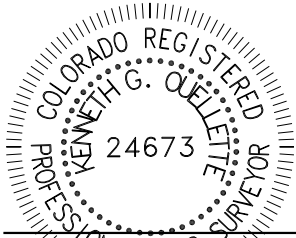
PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN AS BEARING N89°19'42"E A DISTANCE OF 2608.00 FEET BETWEEN THE NORTHWEST CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED: PLS 24313 AND THE NORTH QUARTER CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED: PLS 38058.

COMMENCING AT SAID NORTH QUARTER CORNER OF SECTION 18;
THENCE S70°13'55"W A DISTANCE OF 2697.02 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 RECORDED IN BOOK 5849 AT PAGE 596 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT BEING THE **POINT OF BEGINNING**;
THENCE S85°53'59"E A DISTANCE OF 75.00 FEET;
THENCE S04°06'01"W A DISTANCE OF 100.00 FEET;
THENCE N85°53'59"W A DISTANCE OF 75.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470;
THENCE N04°06'01"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 7,500 SQUARE FEET (0.172 ACRES), MORE OR LESS.



KENNETH G. OUELLETTE, P.L.S. 24673
DATE: MAY 16, 2021
JOB NO. 65420899
FOR AND ON BEHALF OF MERRICK & COMPANY



MERRICK®

5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
EXHIBIT A

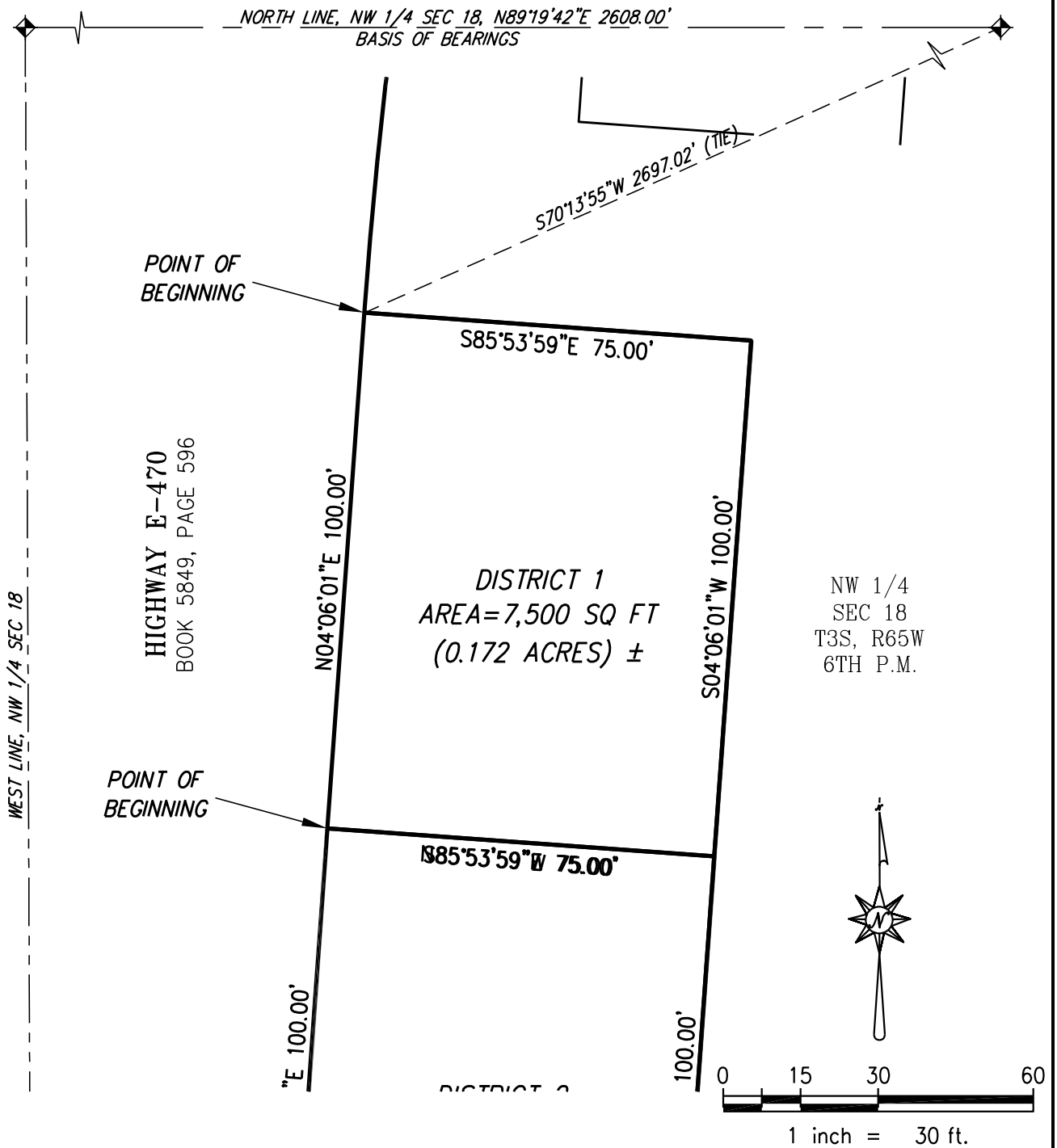
DATE: 5/6/21

SHEET: 1 OF 1

ILLUSTRATION FOR A-2

NW COR SEC 18
#6 REBAR WITH 3-1/4" ALUM. CAP
STAMPED: PLS 24313

POINT OF COMMENCEMENT
N 1/4 CORNER SEC 18
#6 REBAR WITH 2-1/2" ALUM. CAP
STAMPED: PLS 38058



This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.



MERRICK®

5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
EXHIBIT C-1

DATE: 5/6/21

SHEET: 1 OF 1

AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

The undersigned, being a citizen of the U.S. and first duly sworn upon oath, hereby affirms and states:

I have read and understand the laws governing the circulation of petitions; I circulated the foregoing Petition section for the organization for Windler Business Improvement District No. 1; each signature on said Petition section was affixed In my presence; each signature on said Petition section is the signature of the person whose name it purports to be; I was eighteen years of age or older at the time the Petition was circulated for signature and signed by Petitioner; I have not paid and *will* not in the future pay and I believe that no other person has paid or wilt pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the Petition; and I reside at the address set forth below.

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

Michelle Sanchez
Signature of Petition Circulator

7/12/2024
Date of signature

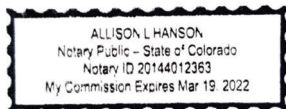
Please Print:

Name of Circulator: Michelle Sanchez

Residence Address: 6306 Nassau Ct
Highlands Ranch, CO 80130

Telephone number: 505-610-2624

The foregoing affidavit was subscribed and affirmed, or sworn to, before me in this 12th day of July, 2021.



Allison L. Hanson
Notary Public

SEAL

My commission expires: March 19, 2022

**INSTRUCTIONS TO PETITION CIRCULATOR
PETITION FOR THE ORGANIZATION OF THE
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1**

ANYONE who is a U.S. citizen and is eighteen years of age or older may act as Petition Circulator

The responsibility of the Circulator is simply to affirm that the signature(s) on page 3 and/or page 4 of the Petition packet was affixed in your presence and that the signature is, to the best of your knowledge and belief, the signature of the person whose name it purports to be.

The Petition Circulator is required to complete the AFFIDAVIT OF CIRCULATOR of the Petition packet and have it notarized. A properly witnessed and notarized AFFIDAVIT OF CIRCULATOR must accompany the Petition packet. The date of the notarization the Affidavit of Circulator must be the same or later date than the date of the signatures that were witnessed by the circulator.

**Special Note to Corporations, LLCs, Partnerships, and LLPs re
AFFIDAVIT OF AUTHORITY:**

Persons who are signing the Petition as the representative of a *Corporation or Limited Liability Company* are required to complete the **top section** of the supplementary form titled **AFFIDAVIT OF AUTHORITY**, which accompanies the Petition packet. **This form requires notarization unless signed in the presence of a Petition Circulator.**

Persons signing on behalf of a *Partnership or Limited Liability Partnership* should also complete the supplemental AFFIDAVIT OF AUTHORITY form, using the **center section** on pertaining to Partnerships and LLPs. As noted previously, **this form requires notarization unless it is signed in front of a Petition Circulator.**

PLEASE:

- **DO NOT** take the Petition apart.
- **DO NOT** remove the staple (it will invalidate the Petition).
 - You cannot add sheets to the Petition.
 - Please make sure all information is complete.
 - Petitioner must print and sign its legal name.
 - Please make sure the Petition is signed in ink.

THANK YOU!

**WINDLER
BUSINESS IMPROVEMENT DISTRICT NO. 1**

2021 OPERATING PLAN AND BUDGET

(City of Aurora, Adams County, Colorado)

Submitted:

July 13, 2021

Prepared by:



2154 E. Commons Ave., Suite 400
Denver, CO 80122

TABLE OF CONTENTS

I. PURPOSE AND SCOPE OF DISTRICT 1

A. Requirement for this Operating Plan 1

B. What Must Be Included in the Operating Plan?..... 1

C. Purposes 1

II. COMPOSITION OF THE DISTRICT’S CURRENT BOARD OF DIRECTORS..... 1

A. Current Board of Directors..... 1

B. Term Limits 1

III. BOUNDARIES, INCLUSIONS AND EXCLUSIONS 1

IV. SERVICES, ACTIVITIES, PROJECTS AND PUBLIC IMPROVEMENTS..... 2

A. Current Year (2021) Services, Activities, Projects and Public Improvements 2

B. Future Year (2022) Services, Activities, Projects and Public Improvements 2

V. SOURCES OF REVENUE..... 2

A. Current Year (2021) Sources of Revenue 2

B. Future Year (2022) Sources of Revenue 2

VI. PROPERTY TAX AND MILL LEVY 3

A. Mill Levy Caps 3

B. Current Year (2021) Mill Levy 3

C. Future Year (2022) Mill Levy 3

VII. AUTHORIZED INDEBTEDNESS AND EXISTING DEBT OBLIGATIONS..... 3

A. Maximum Debt Authorization..... 3

B. Current Year (2021) Debt Outstanding..... 3

C. Future Year (2022) Debt Outstanding 3

VIII. BUDGET 3

A. 2022 Budget 3

IX. DISTRICT CONTACT INFORMATION 3

A. Contact Information 3

X. DISSOLUTION..... 3

XI. CONCLUSION 3

EXHIBIT LIST

- EXHIBIT A** District Legal Description and Map
- EXHIBIT B** Budget
- EXHIBIT C** District Contact Information

I. PURPOSE AND SCOPE OF DISTRICT

A. Requirement for this Operating Plan. The Business Improvement District Act, specifically § 31-25-1211, C.R.S., requires that the Windler Business Improvement District No. 1 (the “**District**”) file an operating plan and budget with the City of Aurora City Clerk no later than September 30th of each year.

1. Under the statute, the City of Aurora (the “**City**”) is to approve the operating plan and budget within thirty (30) days of submittal of all required information.

2. The District will operate under the authorities and powers allowed under §§ 31-25-1201, *et seq.*, C.R.S., as amended (the “**Business Improvement District Act**”), as further described and limited by this Operating Plan.

B. What Must Be Included in the Operating Plan? Pursuant to the Business Improvement District Act, this Operating Plan specifically identifies: (1) the composition of the Board of Directors; (2) the services and improvements to be provided by the District; (3) the taxes, fees, and assessments to be imposed by the District; (4) the estimated principal amount of bonds to be issued by the District; and (5) such other information as the City may require.

C. Purposes. As may be further articulated in succeeding year’s operating plans, the ongoing and contemplated purposes of the District include the financing, acquisition, construction, completion, installation, replacement and/or operation and maintenance of all the services and public improvements allowed under Colorado law for business improvement districts.

II. COMPOSITION OF THE DISTRICT’S CURRENT BOARD OF DIRECTORS

A. Current Board of Directors. The composition of the District’s proposed board of directors (“**Board of Directors**”) is:

1. Christopher H. Fellows
2. Timothy P. O’Connor
3. Dustin M. Anderson
4. Vacant
5. Vacant

Vacancies on the Board are to be filled by appointment by resolution of the City Council to serve until the next regular election. Therefore, the Board will be requesting the City Council appoint successor board members.

B. Term Limits. A ballot question will be included in the District’s November 2, 2021 ballot to eliminate term limits.

III. BOUNDARIES, INCLUSIONS AND EXCLUSIONS

The District’s proposed boundaries are approximately 1 acres as depicted in **Exhibit A**. In subsequent years, the District anticipates inclusion requests for additional property as additional property owners participate in the District.

IV. SERVICES, ACTIVITIES, PROJECTS AND PUBLIC IMPROVEMENTS

The District will be primarily be concerned with the provision of public improvements and services within the boundaries of the District; however, there may be instances where the District will provide public improvements and services outside of the boundaries of the District as part of the project. The District shall have the authority to provide these public improvements and services, but the revenue-raising powers of the District to recoup the costs of extraterritorial public improvements and services shall be as limited by state law. The public improvements that the District anticipates it will construct, install or cause to be constructed or installed, include those public improvements the cost of which may, in accordance with the Business Improvement District Act, lawfully be paid for by the District, including, without limitation, water services, safety protection devices, sanitation services, marketing, streetscape improvements, street improvements, curbs, gutters, culverts, drainage facilities, sidewalks, parking facilities, paving, lighting, grading, landscape and storm and wastewater management facilities and associated land acquisition and remediation (collectively, the “**Public Improvements**”). The costs of such Public Improvements includes the costs of design, acquisition, construction and financing.

The District shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Business Improvement District Act, and other applicable statutes, common law and the Constitution. The District may provide for ownership, operation, and maintenance of Public Improvements and District facilities as activities of the District itself or by contract with other units of government or the private sector.

The property owners of the District request that the City designate the territory within the District as a location for new business or commercial development pursuant to § 31-25-1203(10), C.R.S.

A. Current Year (2021) Services, Activities, Projects and Public Improvements. The District anticipates to undertake only administrative functions during 2021.

B. Future Year (2022) Services, Activities, Projects and Public Improvements. The District intends to undertake the planning of Public Improvements necessary for the development of property within the District.

V. SOURCES OF REVENUE

A. Current Year (2021) Sources of Revenue. The District anticipates developer funding for its initial revenue source.

B. Future Year (2022) Sources of Revenue. The primary source of revenue for the District in 2022 will be developer advances. The District intends to impose a 10.000 mill levy on all property within the District for 2022, all of which will be dedicated to the General Fund. The District may also be the beneficiary of revenues derived from a privately imposed public improvement fee.

VI. PROPERTY TAX AND MILL LEVY

A. Mill Levy Caps. The maximum debt mill levy shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District, and shall be 50 mills as may be adjusted so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

B. Current Year (2021) Mill Levy. The District does not intend to impose a mill levy for 2021.

C. Future Year (2022) Mill Levy. The District intends to impose a 10.000 mill levy on all property within the District for 2022, all of which will be dedicated to the General Fund.

VII. AUTHORIZED INDEBTEDNESS AND EXISTING DEBT OBLIGATIONS

A. Maximum Debt Authorization. The District intends to hold an organizational election for the purpose of authorizing debt, taxes, revenue limits, spending limits, special assessments, and such other matters as may be necessary or convenient for the implementation of Article X, Section 20 of the Colorado Constitution (“TABOR”). The initial maximum debt authorization for the District shall be \$100,000,000.

B. Current Year (2021) Debt Outstanding. The District has no outstanding debt obligations.

C. Future Year (2022) Debt Outstanding. The District does not anticipate issuing debt in 2021.

VIII. BUDGET

A. 2021 Budget. The proposed 2021 Budget for the District is attached as **Exhibit B**.

IX. DISTRICT CONTACT INFORMATION

A. Contact Information. Contact information for the District’s representative where follow-up inquires and questions should be directed is set forth on **Exhibit C**.

X. DISSOLUTION

The District is anticipated to have ongoing operations and maintenance obligations that will necessitate a perpetual existence. If the District no longer has such obligations, the District may seek to dissolve pursuant to § 31-25-1225, C.R.S.

XI. CONCLUSION

It is submitted that this Operating Plan and Budget for the District meets the requirements of the Business Improvement District Act, the Colorado Constitution, and the additional

information required by the City. It is further submitted that the types of services and improvements to be provided by the District are those services and improvements which satisfy the purposes of C.R.S. §§ 32-25-1201, *et. seq.*

EXHIBIT A
DISTRICT LEGAL DESCRIPTION AND MAP

NW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST 6th P.M.
----CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO----

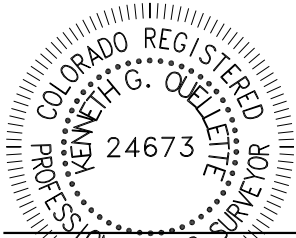
PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN AS BEARING N89°19'42"E A DISTANCE OF 2608.00 FEET BETWEEN THE NORTHWEST CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED: PLS 24313 AND THE NORTH QUARTER CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED: PLS 38058.

COMMENCING AT SAID NORTH QUARTER CORNER OF SECTION 18;
THENCE S70°13'55"W A DISTANCE OF 2697.02 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 RECORDED IN BOOK 5849 AT PAGE 596 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT BEING THE **POINT OF BEGINNING**;
THENCE S85°53'59"E A DISTANCE OF 75.00 FEET;
THENCE S04°06'01"W A DISTANCE OF 100.00 FEET;
THENCE N85°53'59"W A DISTANCE OF 75.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470;
THENCE N04°06'01"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 7,500 SQUARE FEET (0.172 ACRES), MORE OR LESS.



KENNETH G. OUELLETTE, P.L.S. 24673
DATE: MAY 16, 2021
JOB NO. 65420899
FOR AND ON BEHALF OF MERRICK & COMPANY



MERRICK®

5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
EXHIBIT A

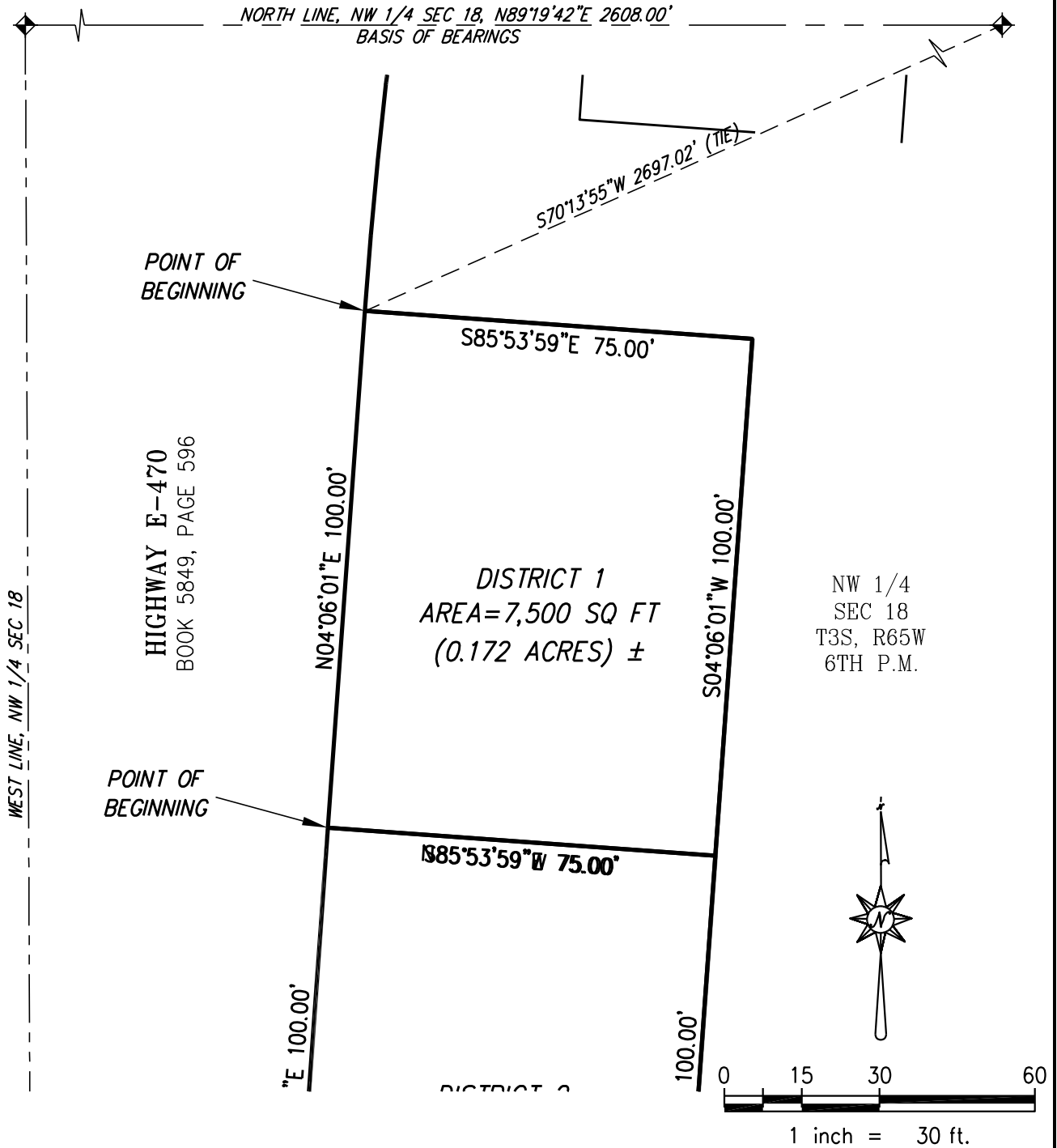
DATE: 5/6/21

SHEET: 1 OF 1

ILLUSTRATION FOR A-2

NW COR SEC 18
#6 REBAR WITH 3-1/4" ALUM. CAP
STAMPED: PLS 24313

POINT OF COMMENCEMENT
N 1/4 CORNER SEC 18
#6 REBAR WITH 2-1/2" ALUM. CAP
STAMPED: PLS 38058



This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.



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WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
EXHIBIT C-1

DATE: 5/6/21

SHEET: 1 OF 1

EXHIBIT B
BUDGET

Windler Business Improvement District #1
Proposed Budget
General Fund
For the Year ended December 31, 2021 and December 31, 2022

	<u>Actual</u> <u>2020</u>	<u>Proposed</u> <u>Budget</u> <u>2021</u>	<u>Estimate</u> <u>2021</u>	<u>Proposed</u> <u>Budget</u> <u>2022</u>
Beginning fund balance	\$ -	\$ -	\$ -	\$ -
Revenues:				
Developer advances	-	50,000	50,000	50,000
Total revenues	-	50,000	50,000	50,000
Total funds available	-	50,000	50,000	50,000
Expenditures:				
Accounting / audit	-	5,000	5,000	5,000
Directors fees	-	900	900	1,800
Insurance/SDA dues	-	2,500	2,500	2,500
Legal	-	22,500	22,500	22,500
Management	-	3,500	3,500	3,500
Miscellaneous	-	2,000	2,000	2,000
Contingency	-	12,508	13,600	11,581
Emergency reserve (3%)	-	1,092	-	1,119
Total expenditures	-	50,000	50,000	50,000
Ending fund balance	\$ -	\$ -	\$ -	\$ -
Assessed valuation		\$ -		\$ -
Mill Levy		-		-

EXHIBIT C

DISTRICT CONTACT INFORMATION

District Contact:

Clint C. Waldron, Esq.
2154 E Commons Avenue, Suite 2000
Centennial, CO 80122
Work: 303-858-1800
Email: cwaldron@wbapc.com

Megan J. Murphy, Esq.
2154 E Commons Avenue, Suite 2000
Centennial, CO 80122
Work: 303-858-1800
Email: mmurphy@wbapc.com

ORDINANCE NO. 2021 _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ORGANIZING WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1; PROVIDING FOR AN ELECTION OF THE BOARD OF DIRECTORS OF THE DISTRICT; AND APPROVING THE 2019 OPERATING PLAN AND BUDGET FOR THE DISTRICT

WHEREAS, the City Council of the City of Aurora, Colorado (the “City”), has received a petition for the organization of the Windler Business Improvement District No. 1 within the City (the “District”); and

WHEREAS, based upon the petition for organization (the “Petition”) and other evidence presented to the City Council, the Petition has been signed in conformity with the Business Improvement District Act, Section 31-25-1201 et seq., C.R.S. (the “Act”), the signatures on the Petition are genuine, and the signatures of petitioners represent the persons who own real or personal property in the service area of the proposed District having a valuation for assessment of not less than fifty percent of the valuation for assessment of all real and personal property in the service area of the proposed District and who own at least fifty percent of the acreage in the proposed District; and

WHEREAS, the petitioners have also caused a copy of the District’s 2019 Operating Plan and Budget (the “Operating Plan”) to be submitted at the same time as the Petition; and

WHEREAS, all non-commercial properties within the boundaries of the District, if any, as required by Section 31-25-1208, C.R.S., are excluded; and

WHEREAS, the commercial property owners of the proposed District request that the City designate the territory within the service area of the proposed District as a location for new business or commercial development under Section 31-25-1203 (10), C.R.S.; and

WHEREAS, the Petition contains the items required by the Act including, among other things:

(a) The name of the District, which is to be “Windler Business Improvement District No. 1”; and

(b) A general description of the boundaries and service area of the District is approximately 1 acres of vacant land located west of Harvest Road, north of E. 42nd Avenue, south of E. 56th Avenue and east of E-470, City of Aurora, Adams County, Colorado. The District's boundaries are the territory of the commercial property, as defined in the Act, within the above service area; and

(c) A general description of the types of services or improvements or both to be provided by the proposed District; and

(d) The names of three persons to represent the petitioners, who have the power to enter into agreements relating to the organization of the District; and

(e) A request that City Council appoint the initial members of the Board of Directors pursuant to Section 31-25-1209(1)(b) of the Act, and provide for an election of subsequent members of the Board of Directors of the District pursuant to Section 31-25-1209(1)(d), of the Act; and

(f) A request that City Council approve the Operating Plan and Budget; and

(g) A request that City Council approve the organization of the District; and

WHEREAS, sufficient genuine signatures exist on the Petition of persons who are qualified to sign such Petition; and

WHEREAS, City Council has determined that the allegations of the Petition are true; and

WHEREAS, the Petition provided that, upon the request of the City, the petitioners for the District will execute a bond or provide a cash deposit sufficient to cover all expenses anticipated to be incurred by the City in connection with the proceedings in case the organization of the District is not effected; and

WHEREAS, the service area of the proposed District is entirely within the City and is a location for new business or commercial development; and

WHEREAS, a legal description of the service area and boundaries of the proposed District is attached hereto as Exhibit A and is incorporated herein by reference; and

WHEREAS, City Council has determined that the types of services or improvements to be provided by the proposed District are of the type which best satisfy the purposes of the Act; and

WHEREAS, the City Council has held and concluded a public hearing on the matter following due notice of such hearing as required by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO THAT:

Section 1. Pursuant to its authority to organize business improvement districts under the Act, and specifically Section 31-25-1207(5), C.R.S., the City Council, as the governing body of the City, hereby adjudicates all questions of jurisdiction to find that jurisdiction is vested in the City Council to organize the business improvement district described in the Petition submitted by the petitioners for the Windler Business Improvement District No. 1.

Section 2. The City Council hereby declares the organization of the District in a location designated by the City as location for new business or commercial development, which shall have the service area and boundaries set forth in the attached Exhibit A.

Section 3. The District shall be a quasi-municipal corporation and political subdivision of the State of Colorado with all powers and responsibilities thereof. The District shall hereafter have the corporate name specified in the Petition: “Windler Business Improvement District No.1.”

Section 4. Pursuant to Section 31-25-1209(1)(b), C.R.S., the City Council may appoint the initial members of the Board of Directors of the District (the “Board”). The initial Board shall have five (5) members and each member shall be an elector of the District, as that term is defined in Section 31-25-1203 (4)(a), C.R.S. The City Council hereby appoints the following five (5) members of the Board of the District:

- 1) Christopher H. Fellows;
- 2) Dustin Anderson;
- 3) Timothy O’Connor;
- 4) Vacant; and
- 5) Vacant.

Subsequent members of the Board will be elected at regular elections, pursuant to C.R.S. § 31-25-1209(1)(d), and thereafter at regular elections pursuant to the laws of the State of Colorado and the Operating Plan. The term of office for the members shall be four (4) years and as otherwise provided pursuant to article 1 of title 32, C.R.S. Within thirty (30) days after a vacancy occurs, a successor shall be appointed by resolution of City Council to serve until the next regular election.

Section 5. Each member, within thirty days after his or her election or appointment to fill a vacancy, except for good cause shown, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto. The Board shall carry out the responsibilities required of such Board by the Act and other applicable law.

Section 6. In accordance with Section 31-25-1211, C.R.S., the Operating Plan is hereby approved. Beginning in 2022 (for use in 2023), an annual Operating Plan and Budget will be submitted to City Council, with a copy to the designated municipal official, on or before September 30th of each year, in accordance with § 31-25-1211, C.R.S. The review, processing and approval of the budget is subject to fees as approved by the City of Aurora.

Section 7. The Board shall file its future operating plans and budgets and amendments thereto with the City Clerk for the approval of the City Council as provided in Section 31-25-1211, C.R.S.

Section 8. The actions of the City Clerk, petitioners, and designated election official in setting and providing public notice of the public hearing on the Petition are hereby ratified and confirmed.

Section 10. The City Council hereby approves the Intergovernmental Agreement between the City of Aurora Colorado and the District, as presented in this meeting, with such technical variations, additions, or deletions therein as the City Attorney shall deem necessary or appropriate, and not inconsistent with the approval thereof by this Ordinance.

Section 11. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed, except that this section shall not be construed so as to revive any act, order, resolution, or ordinance, or part thereof previously repealed.

Section 12. Pursuant to Section 5-5 of the City Charter, 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 _____, 2021.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

Handwritten signature of Brian J. Rulla in blue ink, with the initials 'C.McK' written above it.

BRIAN J. RULLA, Asst. City Attorney

Exhibit A
Windler Business Improvement District No. 1 Boundaries

A-2

NW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST 6th P.M.
-----CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO-----

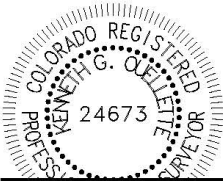
PROPERTY DESCRIPTION

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BEARINGS ARE ASSUMED AND ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN AS BEARING N89°19'42"E A DISTANCE OF 2608.00 FEET BETWEEN THE NORTHWEST CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED: PLS 24313 AND THE NORTH QUARTER CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED: PLS 38058.

COMMENCING AT SAID NORTH QUARTER CORNER OF SECTION 18;
THENCE S70°13'55"W A DISTANCE OF 2697.02 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 RECORDED IN BOOK 5849 AT PAGE 596 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT BEING THE **POINT OF BEGINNING**;
THENCE S85°53'59"E A DISTANCE OF 75.00 FEET;
THENCE S04°06'01"W A DISTANCE OF 100.00 FEET;
THENCE N85°53'59"W A DISTANCE OF 75.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470;
THENCE N04°06'01"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 7,500 SQUARE FEET (0.172 ACRES), MORE OR LESS.



KENNETH G. OUELLETTE, P.L.S. 24673
DATE: MAY 6, 2021
JOB NO. 65420899
FOR AND ON BEHALF OF MERRICK & COMPANY



MERRICK®
5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1
EXHIBIT A

DATE: 5/6/21

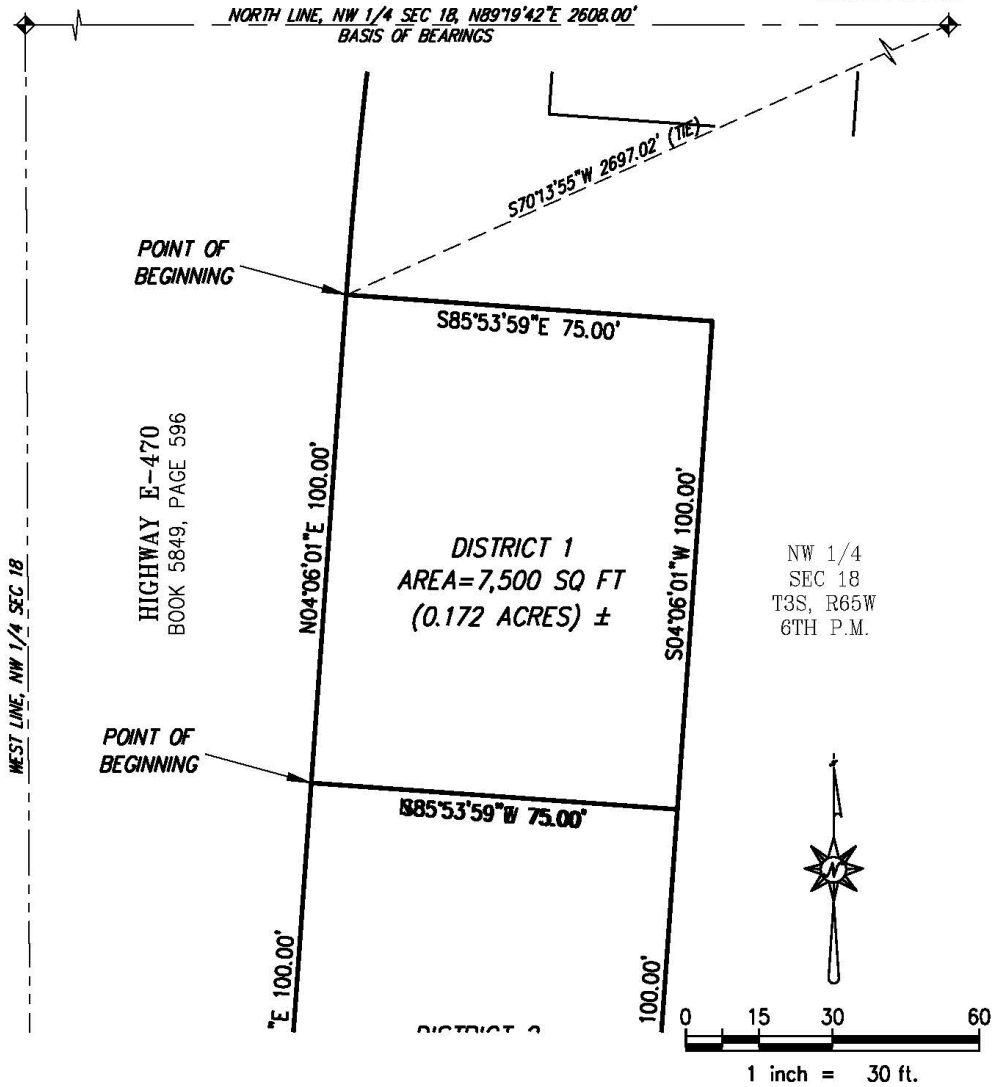
SHEET: 1 OF 1

Q:\DEN\Projects\0898-00-Windler Metro Districts\Design\Survey\dwg\District Parcels.dwg

ILLUSTRATION FOR A-2

NW COR SEC 18
#6 REBAR WITH 3-1/4" ALUM. CAP
STAMPED: PLS 24313

POINT OF COMMENCEMENT
N 1/4 CORNER SEC 18
#6 REBAR WITH 2-1/2" ALUM. CAP
STAMPED: PLS 38058



This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.

 MERRICK® 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1 EXHIBIT C-1	DATE: 5/6/21
		SHEET: 1 OF 1

Q:\DEN\Projects\0898-00-Windler Metro Districts\Design\Survey\dwg\District Parcels.dwg

**INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF AURORA, COLORADO AND
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1**

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2021, by and between the CITY OF AURORA, a home-rule municipal corporation of the State of Colorado (the “City”), and WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 1, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The City and the District are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s 2021 Operating Plan and Budget (“**Operating Plan**”) approved by the City on September 13, 2021; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers and property owners to enter into this Intergovernmental Agreement (“**Agreement**”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

DEFINITIONS

ARI or Regional Improvements: means Aurora Regional Improvements.

ARI Authority: means one or more Authorities established by an ARI Authority Establishment Agreement.

ARI Establishment Agreement: means an intergovernmental agreement establishing an ARI Authority which has, at minimum, Colo. Rev. Stat., title 32 Special Districts or title 31 Business Improvement Districts from three (3) or more Approved Development Plan areas as parties to the Agreement.

ARI Master Plan: means one or more master plans adopted by an ARI Authority establishing Regional Improvements which will benefit the taxpayers and service users of the District which constitute such ARI Authority, which master plan will change from time to time.

ARI Mill Levy: means five (5) mills if the District has executed an ARI Establishment Agreement or such lesser amount as is necessary to satisfy any debt issued by such ARI Authority, or, in the event the District has not executed an ARI Establishment Agreement within one (1) year following the date of approval of the Operating Plan, then, the following:

A. The mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which: (i) shall be one (1) mill for collection beginning for each district in the first year of collection of a mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; (ii) shall be one and one-half (1.5) mills from the twenty-first (21st) year through the date of repayment of debt incurred for Public Improvements, other than Regional Improvements; and (iii) for five (5) years thereafter, the mill levy shall be the lesser of twenty (20) mills or a mill levy equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of debt issued for Public Improvements, other than Regional Improvements; and

B. Any district may, pursuant to any intergovernmental agreement with the City, extend the term for application of the ARI Mill Levy beyond the years set forth in (A) above.

C. All mills described in this ARI Mill Levy definition shall be subject to adjustment as follows: On or after January 1, 2004, if there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the one (1) mill levy described above may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Regional Improvements: means public improvements and facilities that benefit the Service Area and which are to be financed through the ARI Mill Levy.

COVENANTS AND AGREEMENTS

1. Improvements Dedication. The District shall dedicate the Public Improvements (as referenced in the Operating Plan) to the City or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code.

2. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We [I] certify that (1) the net effective interest rate (calculated as defined in § 32-1-103(12), C.R.S.), to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable

considering the financial circumstances of the District.

3. Debt Issuance Limitation. The District shall not be authorized to incur any indebtedness until such time as the District has approved and executed this IGA.

4. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

5. Bankruptcy. All of the limitations contained in the Operating Plan, including, but not limited to, those pertaining to the maximum mill levy have been established under the authority of the City to approve an Operating Plan with conditions. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent an amendment to the Operating Plan; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code, 11 U.S.C. § 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under 11 U.S.C. § 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the maximum mill levy shall not be an authorized issuance of Debt unless and until approved by the City.

6. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file appropriate dissolution documents, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to § 31-25-1225, C.R.S..

7. Operating Plan and Budget. The District shall be responsible for submitting an operating plan and budget with the City Clerk no later than September 30th of each year.

8. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provision of the Regional Improvements.

The District shall impose the ARI Mill Levy and shall convey it as follows:

(a) If the District has executed an ARI Authority Establishment Agreement and the City has been offered the opportunity to execute an ARI Authority Establishment Agreement, the terms of which provide for the City to appoint no less than thirty percent (30%) and no more than forty-nine percent (49%) of the Board members who will serve as the board of directors of the ARI Authority to be established by such ARI Authority Establishment Agreement, regardless as to whether the City approves the execution of such ARI Authority Establishment Agreement, the revenue from the ARI Mill Levy shall be conveyed to the ARI Authority for the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements in the ARI Master Plan and for the operations of such ARI Authority; or

(b) If the City and the District have executed an intergovernmental agreement then the revenue from the ARI Mill Levy shall be conveyed to the City for use in planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users and taxpayers of the District in accordance with such agreement; or

(c) If neither of the above is applicable, then the revenue shall be conveyed to the City and (i) the City shall place in a special account all revenues received from the ARI Mill Levy and shall not expend such revenue until an intergovernmental agreement is executed between the District establishing the terms and conditions for the provision of the Regional Improvements; and (ii) if the intergovernmental agreement is not executed within two (2) years from the date of the approval of the Operating Plan by the City and neither of the above have occurred within two (2) years from the date of the approval of the Operating Plan by the City, then the revenue from the ARI Mill Levy shall be conveyed to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users or taxpayers of the District as prioritized and determined by the City.

As set forth in the definition of the ARI Mill Levy, the District may, pursuant to any intergovernmental agreement with the City, extend the terms for application of the ARI Mill Levy beyond the years set forth in this section.

The Regional Improvements shall be limited to the provision of the planning, design, acquisition, construction, installation, relocation and/or redevelopment of street and transportation related improvements and the administration and overhead costs incurred therefrom, unless the City has agreed otherwise in writing; provided, however in no event shall the Regional Improvements include water or sanitary sewer improvements unless such improvements are necessary as a part of completing street and transportation related improvements. The District shall cease to be obligated to impose, collect and convey to the City the revenue from the ARI Mill Levy at such time as the area within the District's boundaries is included within a different district organized under the Special District Act or a General Improvement District organized under C.R.S. §§ 31-25- 601, *et seq.*, or Business Improvement District organized under C.R.S. §§ 31-25-1201, *et seq.*, which other district has been organized to fund a part or all of the Regional Improvements.

9. Maximum Debt Mill Levy. The maximum debt mill levy shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District, and shall

be 50 mills as may be adjusted so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

10. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Windler Business Improvement District No. 1
2154 East Commons Avenue, Suite 2000
Centennial, CO 80122
Attn: Clint Waldron, Esq.
Phone: (303) 858-1800
Fax: (303) 858-1801

To the City: City of Aurora
15151 E. Alameda Pkwy., 5th Floor
Aurora, CO 80012
Attn: Michael Hyman, City Attorney
Phone: (303) 739-7030
Fax: (303) 739-7042

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

11. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Operating Plan.

12. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

13. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys'

fees.

14. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado.

15. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

16. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

17. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

18. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

20. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

21. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Operating Plan.

[SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

WINDLER BUSINESS IMPROVEMENT
DISTRICT NO. 1

By: _____
Officer of the District

Attest:

Secretary

CITY OF AURORA, COLORADO

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk



BRIAN J. RULLA, Asst. City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: An Ordinance of the City Council of the City of Aurora, Colorado, organizing the Windler No. 2 Business Improvement District; providing for an election of the Board of Directors of the District; and approving the 2021 Operating Plan and Budget for the Di

Item Initiator: Cesarina Dancy, Development Project Manager, Office of Development Assistance

Staff Source/Legal Source: Cesarina Dancy, Development Project Manager, Office of Development Assistance/ Brian Rulla, Assistant City Attorney

Outside Speaker:

Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
- Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Management & Finance

Policy Committee Date: 7/27/2021

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

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

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

The City Council for the City of Aurora approved a Service Plan for WH Metropolitan District No. 1 and a Service Plan for WH Metropolitan District No. 2 on August 30, 2004. WH Metropolitan District No. 2 subsequently changed its name to Windler Homestead Metropolitan District. The City Council approved an Amended and Restated Service Plan for WH Metropolitan District No. 1 and an Amended and Restated Service Plan for Windler Homestead Metropolitan District on June 28, 2021. WH Metropolitan District No. 1 and GVP Windler, LLC have requested the City Council approve a Second Amended and Restated Service Plan for WH Metropolitan District No. 1 together with the Consolidated Service Plan for WH Metropolitan District Nos. 2-10 at a public hearing on August 2, 2021.

Metropolitan Districts are used throughout the city to assist in the financing of public improvements. However, Metropolitan Districts (MDs) are subject to certain restrictions that limit projects, especially those that include commercial development, which may require a wide array of public improvements and amenities. In such cases having a Business Improvement District (BID) along with the MD offers several advantages. BIDs unlike MDs can provide marketing and advocacy services, may offer additional flexibility related to types of public improvements it can fund and allows for the imposition of special assessments that can be tailored to the types of businesses (see petitioners letter attached).

Pursuant to the provisions of the Business Improvement District Act of Colorado Revised Statutes, the property owner, GVP Windler LLC is petitioning to organize the Windler Business Improvement District No. 2.

Per Colorado State Statute approval for creation of a BID must be given by the governing body of the municipality if the City Council finds that:

- The petition has been signed and presented in conformity with state statute:
- The allegations of the petition are true; and
- The types of services or improvements to be provided by the district are those that best satisfy the purposes set forth in the state statute, then the City Council shall, by ordinance declare the district organized.

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

The petition for the proposed Windler Business Improvement District No. 2 and the proposed Initial Operating Plan and Budget are attached. The petition states that the initial services and improvements to be furnished by the BID include economic development services, district identity/ image enhancement and advocacy on behalf of business and property owners within the districts. The petitions also state that the initial services and improvements will be funded by a mill levy on commercial property not to be greater than 50 mills.

The Operating Plan and Budget anticipates the initial maximum debt authorization for the District to be \$100,000,000. The initial budget advanced by the developer for the year ending December 31, 2021 is \$50,000 and is included as Exhibit B of the Operating Plan and Budget.

The BID may be used to fund and construct public improvements in place of the MD. Therefore, an Intergovernmental Agreement (IGA) between the City and the BID is also being proposed (attached). The IGA includes language from the city's MD model service plan regarding imposition of the ARI Mill Levy (or payment in lieu) for areas of the BID that are not also within the MD. This will ensure that the city's intent for provision of regional infrastructure through the imposition of the Aurora Regional Improvements mill levy (ARI) is being met for this project.

City Council will appoint the initial members of the Board of Directors. This appointment is based on the recommendation of the petitioners. The members must be qualified electors of the proposed District. After this initial appointment, the new Board of Directors will address subsequent elections to the Board within the requirements set by City Council and State law.

QUESTIONS FOR COUNCIL

Does Council wish to move this item to the August 23, 2021 Regular Meeting?

LEGAL COMMENTS

The City Council is vested with the jurisdiction to create and establish business improvement districts within the boundaries of the City. §31-25-1204, C.R.S. If, following a public hearing, the City Council finds that: (i) an organizational petition has been signed and presented in conformity with state statute; (ii) the allegations of the petition are true; and (iii) the types of services or improvements to be provided by the district are those that best satisfy the purposes set forth in state statute, then the City Council shall, by ordinance, declare the district organized. §31-25-1207(5), C.R.S.

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)

(Rulla)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain:

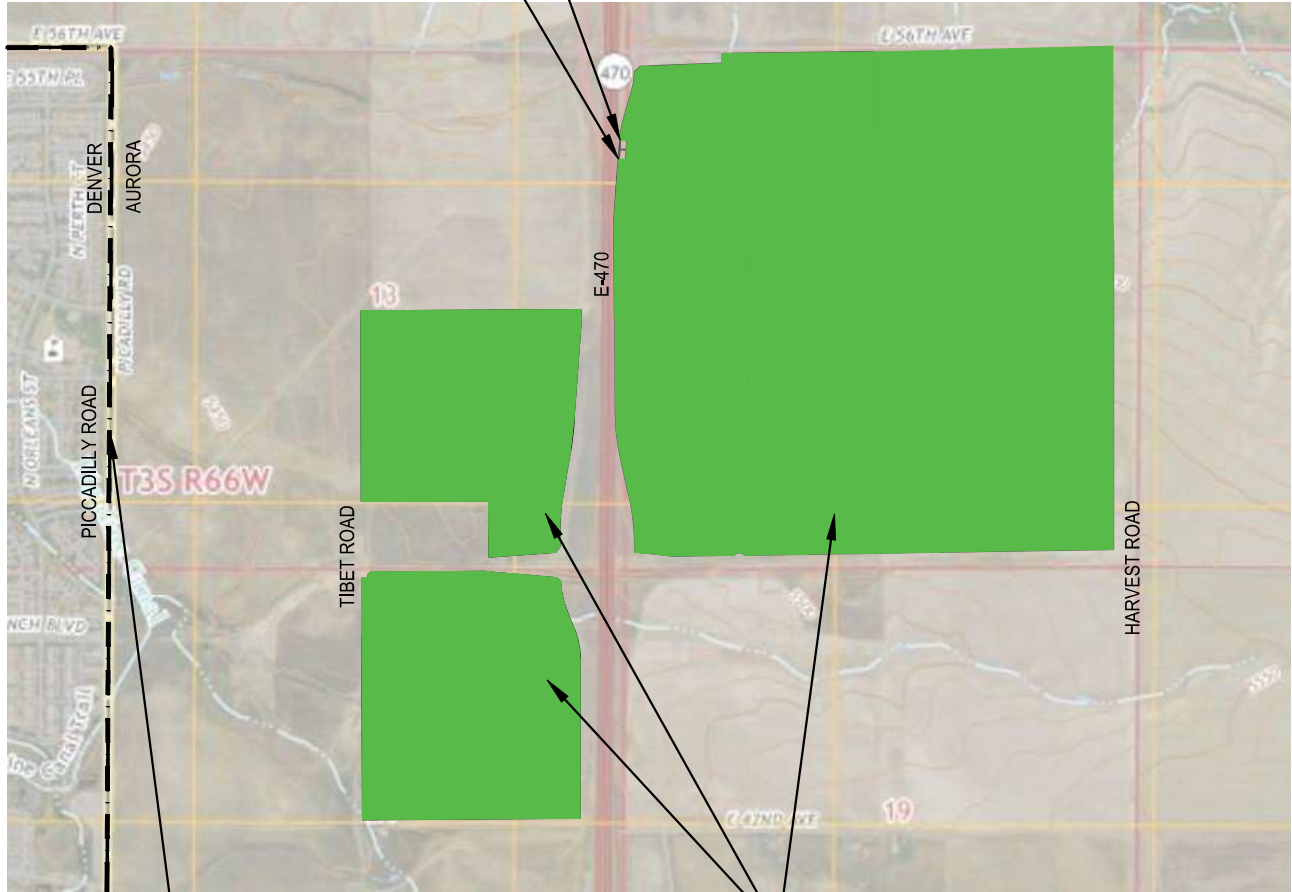
PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: Formation of the Business Improvement Districts will obligate the property owners to an additional mill levy that may be approved by the district board.

WINDLER BUSINESS
IMPROVEMENT
DISTRICT NO. 1

WINDLER BUSINESS
IMPROVEMENT
DISTRICT NO. 2



AURORA / DENVER
CITY LIMIT

WINDLER PROJECT



SCALE: 1" = 2000'



WINDLER BUSINESS IMPROVEMENT DISTRICT
AURORA VICINITY MAP
EXHIBIT B

DATE: 7/15/2021

SHEET: 1 OF 1

**PETITION FOR THE ORGANIZATION OF THE
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2
(BID)**

Petitioner, GVP Windler, LLC (“**Petitioner**”), as owner of one hundred percent (100%) of the taxable real or personal property in the service area of the proposed Windler Business Improvement District No. 2 (the “**District**”) hereby petitions the City Council of the City of Aurora (the “**City**”) for the organization of the District in accordance with the provisions of the Business Improvement District Act, §§ 31-25-1201, *et seq.*, C.R.S.

In support of this petition, Petitioner states as follows:

- 1) The name of the proposed district shall be “Windler Business Improvement District No. 2.”
- 2) The service area of the District will consist of the area described in **Exhibit A** hereto. The boundaries of the District include all properties within the service area perimeter which are classified as commercial property as defined in § 31-25-1203(2), C.R.S.
- 3) The services and improvements to be provided include any services and improvements authorized by the Business Improvement District Act together with all duties and functions authorized by said Act. The initial services and improvements to be furnished by the District include *Economic Development Services* (including new and existing business support, business attraction and retention, consumer marketing and promotions, business improvement district ratepayer communications and special events), *District Identity and Image Enhancement* (including improvements such as banners, signage, streetscape design and/or implementation, public art and other special projects) and *Advocacy* on behalf of business and property owners within the District (including advocacy for planning and development policies and issues that affect service area of the District, strengthening ongoing relationships with adjacent neighborhoods, the City of Aurora, Colorado Department of Transportation, and Regional Transportation District, and seeking grants and other funding to leverage the District’s assessments for projects and improvements).
- 4) The commercial property owners of the proposed district request that the City, after public notice and hearing, designate the territory within the proposed district as a location for new business or commercial development under § 31-25-1203(10), C.R.S.
- 5) The services, facilities, and improvements to be provided by the District are not intended to duplicate or supplant the services, facilities and improvements provided by the City of Aurora within the proposed district boundaries. The District is being created to provide enhanced and otherwise unavailable services and improvements within its boundaries.

- 6) The initial services and improvements to be provided by the District will be funded by a mill levy. By law, any property that is within the District boundary that is classified by the county assessor for property tax purposes as residential or agricultural is not subject to the revenue raising powers of the District and will not be assessed by the District. The mil levy shall not be greater than 50 mills on commercial property within the BID boundary.

The mill levy will be collected by the Adams County Treasurer or other appropriate entity in a timely fashion in order for the District programs to be funded and operational beginning as early as January 2022.

The District may utilize other revenue sources authorized by law, including rates, fees, charges, or differing forms of special assessments as provided by law, or public improvement fees all as set forth in the annual operating plan, as it may be amended from time to time (“**Operating Plan**”), and as submitted to the City in accordance with § 31-25-1211, C.R.S.

- 7) Three persons who represent Petitioner and who have power to enter into agreements relating to the organization of the BID:

Christopher H. Fellows
Dustin Anderson
Timothy O’Connor

- 8) Petitioner owns one hundred percent (100%) of the real or personal property in the service area of the proposed district as shown on the assessor rolls of the County of Adams and owns at least fifty percent (50%) of the acreage in the proposed District.
- 9) If requested by the City, Petitioner will execute a bond or provide a cash deposit in an amount sufficient, as determined by the City, to cover all municipal expenses connected with organizational proceedings in case the organization of the District is not effected. Additionally, if at any time during the organizational process the City determines that the amount of the initially requested bond or cash deposit is not sufficient to cover such costs, it may require the execution of an additional bond or the deposit of additional cash, in an amount determined by the City. Petitioner acknowledge that failure to file such initial or additional bond or deposit within the time fixed, which shall not be less than ten (10) days, will result in dismissal of the Petition.

WHEREFORE, Petitioner respectfully requests the City approve the organization of Windler Business Improvement District No. 2, and approve the 2021 Operating Plan and Budget for the District submitted with this Petition. The initial Board of Directors of the District is to be elected at the election to be held on November 2, 2021 and thereafter at regular elections pursuant to the laws of the State of Colorado and the Operating Plan.

[end of text-signatures on following sheets]

**WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2
PETITION**

**WARNING
IT IS AGAINST THE LAW:**

For anyone to sign this Petition with any name other than one's own or to knowingly sign one's name more than once for the same measure or to knowingly sign the Petition when not eligible to do so. Do not sign this Petition unless you (or the entity you are signing for) own real or personal property in the proposed district. Do not sign this Petition unless you have read or have had read to you the Petition in its entirety and understand its meaning.

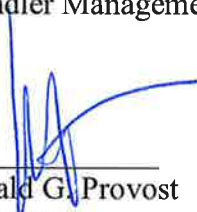
Printed Name of Property Owner/Petitioner:

GVP Windler, LLC, a Delaware limited liability company

By: GVP Alberta Windler, LLC, a Delaware limited liability company
Its: Sole Member

By: Alberta Windler Investor, LLC, a Colorado limited liability company
Its: Operating Member

By: Alberta Windler Management, LLC, a Colorado limited liability
company
Its: Manager



By: Donald G. Provost
Its: Manager

Street address and/or description of taxable property located in the proposed Windler Business Improvement District No. 2 represented by the above signature:

See Exhibit A

***Your signature must be witnessed by a Notary Public unless you sign in front of a
Petition Circulator***

Notarization:

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

The foregoing petition signature was subscribed or acknowledged before me this 12 day of July, 2021 by Donald G. Provost as Manager of Alberta Windler Management, LLC.

Michelle Sanchez



SEAL

My commission expires: June 11, 2025

AFFIDAVIT OF AUTHORITY

Required if record title to property is held by a Corporation, Partnership, LLC, LLP or any other entity that is not a natural person

If property owner of record is a Corporation or Limited Liability Company (LLC), complete the following affidavit.

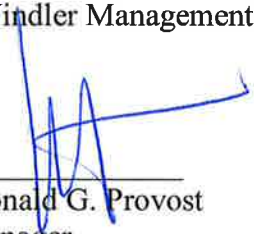
I, Donald G. Provost, do solemnly swear or affirm that I hold the following office with GVP Windler, LLC, the record owner of the property within the service area of the proposed Windler Business Improvement District No. 2 represented by and described on the foregoing Petition, that I signed the Petition for the formation of said district on behalf of the owner of said property, and that I am authorized to sign the Petition on behalf of the said owner.

GVP Windler, LLC, a Delaware limited liability company

By: GVP Alberta Windler, LLC, a Delaware limited liability company
Its: Sole Member

By: Alberta Windler Investor, LLC, a Colorado limited liability company
Its: Operating Member

By: Alberta Windler Management, LLC, a Colorado limited liability company
Its: Manager



By: Donald G. Provost
Its: Manager

Your signature must be notarized by a Notary Public unless you sign this Petition before a Petition Circulator.

Notarization:

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

The foregoing Petition signature was subscribed or acknowledged before me this 12 day of July, 2021 by Donald G. Provost as Manager of Alberta Windler Management, LLC.

Michelle Sanchez
Notary Public

SEAL



My commission expires: June 11, 2025

EXHIBIT A

**DESCRIPTION OF PROPERTY TO BE INCLUDED INTO
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2**

NW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST 6th P.M.
 ----CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO----

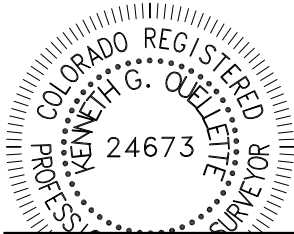
PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN AS BEARING N89°19'42"E A DISTANCE OF 2608.00 FEET BETWEEN THE NORTHWEST CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED: PLS 24313 AND THE NORTH QUARTER CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED: PLS 38058.

COMMENCING AT SAID NORTH QUARTER CORNER OF SECTION 18;
 THENCE S68°19'07"W A DISTANCE OF 2739.01 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 RECORDED IN BOOK 5849 AT PAGE 596 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT BEING THE **POINT OF BEGINNING**;
 THENCE S85°53'59"E A DISTANCE OF 75.00 FEET;
 THENCE S04°06'01"W A DISTANCE OF 100.00 FEET;
 THENCE N85°53'59"W A DISTANCE OF 75.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470;
 THENCE N04°06'01"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 7,500 SQUARE FEET (0.172 ACRES), MORE OR LESS.



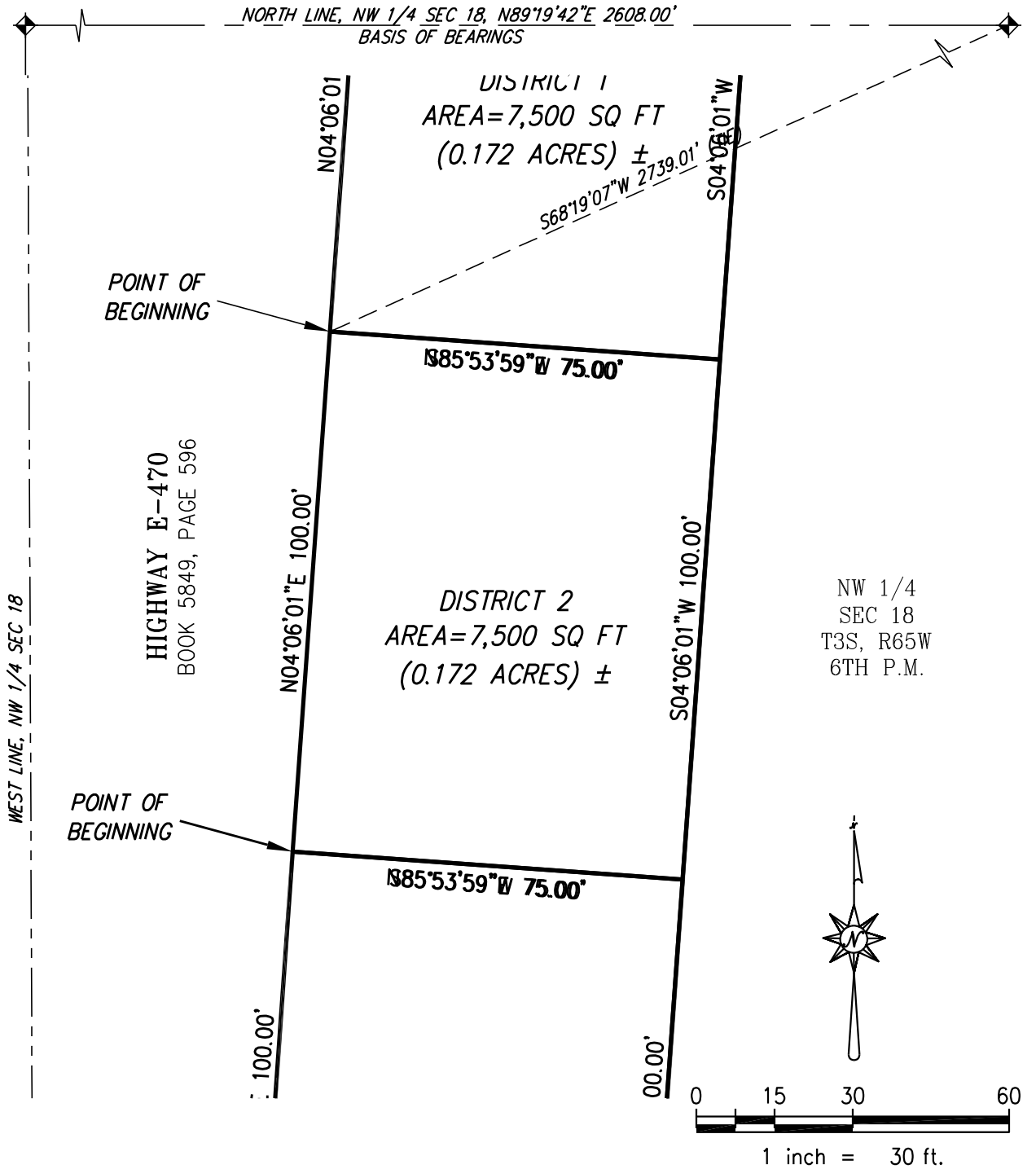
KENNETH G. OUELLETTE, P.L.S. 24673
 DATE: MAY 16, 2021
 JOB NO. 65420899
 FOR AND ON BEHALF OF MERRICK & COMPANY

 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2 EXHIBIT A	DATE: 5/6/21
		SHEET: 1 OF 1

ILLUSTRATION FOR A-3

NW COR SEC 18
#6 REBAR WITH 3-1/4" ALUM. CAP
STAMPED: PLS 24313

POINT OF COMMENCEMENT
N 1/4 CORNER SEC 18
#6 REBAR WITH 2-1/2" ALUM. CAP
STAMPED: PLS 38058



This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.



MERRICK®
5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2
EXHIBIT C-1

DATE: 5/6/21

SHEET: 1 OF 1

AFFIDAVIT OF CIRCULATOR

STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

The undersigned, being a citizen of the U.S. and first duly sworn upon oath, hereby affirms and states:

I have read and understand the laws governing the circulation of petitions; I circulated the foregoing Petition section for the organization for Windler Business Improvement District No. 2; each signature on said Petition section was affixed In my presence; each signature on said Petition section is the signature of the person whose name it purports to be; I was eighteen years of age or older at the time the Petition was circulated for signature and signed by Petitioner; I have not paid and *will* not in the future pay and I believe that no other person has paid or wilt pay, directly or indirectly, any money or other thing of value to any signer for the purpose of inducing or causing such signer to affix the signer's signature to the Petition; and I reside at the address set forth below.

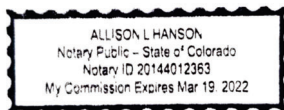
STATE OF COLORADO }
COUNTY OF Arapahoe } ss.

Michelle Sanchez 7/12/2021
Signature of Petition Circulator Date of signature

Please Print:

Name of Circulator: Michelle Sanchez
Residence Address: 6306 Nassau Ct 80130
Highlands Ranch, CO 80111
Telephone number: 505-610-2624

The foregoing affidavit was subscribed and affirmed, or sworn to, before me in this 12th day of July, 2021.



Allison L Hanson
Notary Public

SEAL

My commission expires: March 19, 2022

**INSTRUCTIONS TO PETITION CIRCULATOR
PETITION FOR THE ORGANIZATION OF THE
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2**

ANYONE who is a U.S. citizen and is eighteen years of age or older may act as Petition Circulator

The responsibility of the Circulator is simply to affirm that the signature(s) on page 3 and/or page 4 of the Petition packet was affixed in your presence and that the signature is, to the best of your knowledge and belief, the signature of the person whose name it purports to be.

The Petition Circulator is required to complete the AFFIDAVIT OF CIRCULATOR of the Petition packet and have it notarized. A properly witnessed and notarized AFFIDAVIT OF CIRCULATOR must accompany the Petition packet. The date of the notarization the Affidavit of Circulator must be the same or later date than the date of the signatures that were witnessed by the circulator.

**Special Note to Corporations, LLCs, Partnerships, and LLPs re
AFFIDAVIT OF AUTHORITY:**

Persons who are signing the Petition as the representative of a *Corporation or Limited Liability Company* are required to complete the **top section** of the supplementary form titled **AFFIDAVIT OF AUTHORITY**, which accompanies the Petition packet. **This form requires notarization unless signed in the presence of a Petition Circulator.**

Persons signing on behalf of a *Partnership or Limited Liability Partnership* should also complete the supplemental AFFIDAVIT OF AUTHORITY form, using the **center section** on pertaining to Partnerships and LLPs. As noted previously, **this form requires notarization unless it is signed in front of a Petition Circulator.**

PLEASE:

- **DO NOT** take the Petition apart.
- **DO NOT** remove the staple (it will invalidate the Petition).
 - You cannot add sheets to the Petition.
 - Please make sure all information is complete.
 - Petitioner must print and sign its legal name.
 - Please make sure the Petition is signed in ink.

THANK YOU!

**WINDLER
BUSINESS IMPROVEMENT DISTRICT NO. 2**

2021 OPERATING PLAN AND BUDGET

(City of Aurora, Adams County, Colorado)

Submitted:

July 13, 2021

Prepared by:



2154 E. Commons Ave., Suite 400
Denver, CO 80122

TABLE OF CONTENTS

I. PURPOSE AND SCOPE OF DISTRICT 1

A. Requirement for this Operating Plan 1

B. What Must Be Included in the Operating Plan?..... 1

C. Purposes 1

II. COMPOSITION OF THE DISTRICT’S CURRENT BOARD OF DIRECTORS..... 1

A. Current Board of Directors..... 1

B. Term Limits 1

III. BOUNDARIES, INCLUSIONS AND EXCLUSIONS 1

IV. SERVICES, ACTIVITIES, PROJECTS AND PUBLIC IMPROVEMENTS..... 2

A. Current Year (2021) Services, Activities, Projects and Public Improvements 2

B. Future Year (2022) Services, Activities, Projects and Public Improvements 2

V. SOURCES OF REVENUE..... 2

A. Current Year (2021) Sources of Revenue 2

B. Future Year (2022) Sources of Revenue 2

VI. PROPERTY TAX AND MILL LEVY 3

A. Mill Levy Caps 3

B. Current Year (2021) Mill Levy 3

C. Future Year (2022) Mill Levy 3

VII. AUTHORIZED INDEBTEDNESS AND EXISTING DEBT OBLIGATIONS..... 3

A. Maximum Debt Authorization..... 3

B. Current Year (2021) Debt Outstanding..... 3

C. Future Year (2022) Debt Outstanding 3

VIII. BUDGET 3

A. 2022 Budget 3

IX. DISTRICT CONTACT INFORMATION 3

A. Contact Information 3

X. DISSOLUTION..... 3

XI. CONCLUSION 3

EXHIBIT LIST

- EXHIBIT A** District Legal Description and Map
- EXHIBIT B** Budget
- EXHIBIT C** District Contact Information

I. PURPOSE AND SCOPE OF DISTRICT

A. Requirement for this Operating Plan. The Business Improvement District Act, specifically § 31-25-1211, C.R.S., requires that the Windler Business Improvement District No. 2 (the “**District**”) file an operating plan and budget with the City of Aurora City Clerk no later than September 30th of each year.

1. Under the statute, the City of Aurora (the “**City**”) is to approve the operating plan and budget within thirty (30) days of submittal of all required information.

2. The District will operate under the authorities and powers allowed under §§ 31-25-1201, *et seq.*, C.R.S., as amended (the “**Business Improvement District Act**”), as further described and limited by this Operating Plan.

B. What Must Be Included in the Operating Plan? Pursuant to the Business Improvement District Act, this Operating Plan specifically identifies: (1) the composition of the Board of Directors; (2) the services and improvements to be provided by the District; (3) the taxes, fees, and assessments to be imposed by the District; (4) the estimated principal amount of bonds to be issued by the District; and (5) such other information as the City may require.

C. Purposes. As may be further articulated in succeeding year’s operating plans, the ongoing and contemplated purposes of the District include the financing, acquisition, construction, completion, installation, replacement and/or operation and maintenance of all the services and public improvements allowed under Colorado law for business improvement districts.

II. COMPOSITION OF THE DISTRICT’S CURRENT BOARD OF DIRECTORS

A. Current Board of Directors. The composition of the District’s proposed board of directors (“**Board of Directors**”) is:

1. Christopher H. Fellows
2. Timothy P. O’Connor
3. Dustin M. Anderson
4. Vacant
5. Vacant

Vacancies on the Board are to be filled by appointment by resolution of the City Council to serve until the next regular election. Therefore, the Board will be requesting the City Council appoint successor board members.

B. Term Limits. A ballot question will be included in the District’s November 2, 2021 ballot to eliminate term limits.

III. BOUNDARIES, INCLUSIONS AND EXCLUSIONS

The District’s proposed boundaries are approximately 1 acres as depicted in **Exhibit A**. In subsequent years, the District anticipates inclusion requests for additional property as additional property owners participate in the District.

IV. SERVICES, ACTIVITIES, PROJECTS AND PUBLIC IMPROVEMENTS

The District will be primarily be concerned with the provision of public improvements and services within the boundaries of the District; however, there may be instances where the District will provide public improvements and services outside of the boundaries of the District as part of the project. The District shall have the authority to provide these public improvements and services, but the revenue-raising powers of the District to recoup the costs of extraterritorial public improvements and services shall be as limited by state law. The public improvements that the District anticipates it will construct, install or cause to be constructed or installed, include those public improvements the cost of which may, in accordance with the Business Improvement District Act, lawfully be paid for by the District, including, without limitation, water services, safety protection devices, sanitation services, marketing, streetscape improvements, street improvements, curbs, gutters, culverts, drainage facilities, sidewalks, parking facilities, paving, lighting, grading, landscape and storm and wastewater management facilities and associated land acquisition and remediation (collectively, the “**Public Improvements**”). The costs of such Public Improvements includes the costs of design, acquisition, construction and financing.

The District shall have the power and authority to provide the Public Improvements and related operation and maintenance services within and without the boundaries of the District as such power and authority is described in the Business Improvement District Act, and other applicable statutes, common law and the Constitution. The District may provide for ownership, operation, and maintenance of Public Improvements and District facilities as activities of the District itself or by contract with other units of government or the private sector.

The property owners of the District request that the City designate the territory within the District as a location for new business or commercial development pursuant to § 31-25-1203(10), C.R.S.

A. Current Year (2021) Services, Activities, Projects and Public Improvements. The District anticipates to undertake only administrative functions during 2021.

B. Future Year (2022) Services, Activities, Projects and Public Improvements. The District intends to undertake the planning of Public Improvements necessary for the development of property within the District.

V. SOURCES OF REVENUE

A. Current Year (2021) Sources of Revenue. The District anticipates developer funding for its initial revenue source.

B. Future Year (2022) Sources of Revenue. The primary source of revenue for the District in 2022 will be developer advances. The District intends to impose a 10.000 mill levy on all property within the District for 2022, all of which will be dedicated to the General Fund. The District may also be the beneficiary of revenues derived from a privately imposed public improvement fee.

VI. PROPERTY TAX AND MILL LEVY

A. Mill Levy Caps. The maximum debt mill levy shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District, and shall be 50 mills as may be adjusted so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

B. Current Year (2021) Mill Levy. The District does not intend to impose a mill levy for 2021.

C. Future Year (2022) Mill Levy. The District intends to impose a 10.000 mill levy on all property within the District for 2022, all of which will be dedicated to the General Fund.

VII. AUTHORIZED INDEBTEDNESS AND EXISTING DEBT OBLIGATIONS

A. Maximum Debt Authorization. The District intends to hold an organizational election for the purpose of authorizing debt, taxes, revenue limits, spending limits, special assessments, and such other matters as may be necessary or convenient for the implementation of Article X, Section 20 of the Colorado Constitution (“TABOR”). The initial maximum debt authorization for the District shall be \$100,000,000.

B. Current Year (2021) Debt Outstanding. The District has no outstanding debt obligations.

C. Future Year (2022) Debt Outstanding. The District does not anticipate issuing debt in 2021.

VIII. BUDGET

A. 2021 Budget. The proposed 2021 Budget for the District is attached as **Exhibit B**.

IX. DISTRICT CONTACT INFORMATION

A. Contact Information. Contact information for the District’s representative where follow-up inquires and questions should be directed is set forth on **Exhibit C**.

X. DISSOLUTION

The District is anticipated to have ongoing operations and maintenance obligations that will necessitate a perpetual existence. If the District no longer has such obligations, the District may seek to dissolve pursuant to § 31-25-1225, C.R.S.

XI. CONCLUSION

It is submitted that this Operating Plan and Budget for the District meets the requirements of the Business Improvement District Act, the Colorado Constitution, and the additional

information required by the City. It is further submitted that the types of services and improvements to be provided by the District are those services and improvements which satisfy the purposes of C.R.S. §§ 32-25-1201, *et. seq.*

EXHIBIT A
DISTRICT LEGAL DESCRIPTION AND MAP

NW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST 6th P.M.
 ----CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO----

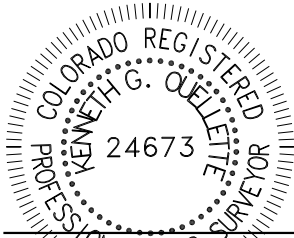
PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN AS BEARING N89°19'42"E A DISTANCE OF 2608.00 FEET BETWEEN THE NORTHWEST CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED: PLS 24313 AND THE NORTH QUARTER CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED: PLS 38058.

COMMENCING AT SAID NORTH QUARTER CORNER OF SECTION 18;
 THENCE S68°19'07"W A DISTANCE OF 2739.01 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 RECORDED IN BOOK 5849 AT PAGE 596 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT BEING THE **POINT OF BEGINNING**;
 THENCE S85°53'59"E A DISTANCE OF 75.00 FEET;
 THENCE S04°06'01"W A DISTANCE OF 100.00 FEET;
 THENCE N85°53'59"W A DISTANCE OF 75.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470;
 THENCE N04°06'01"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 7,500 SQUARE FEET (0.172 ACRES), MORE OR LESS.



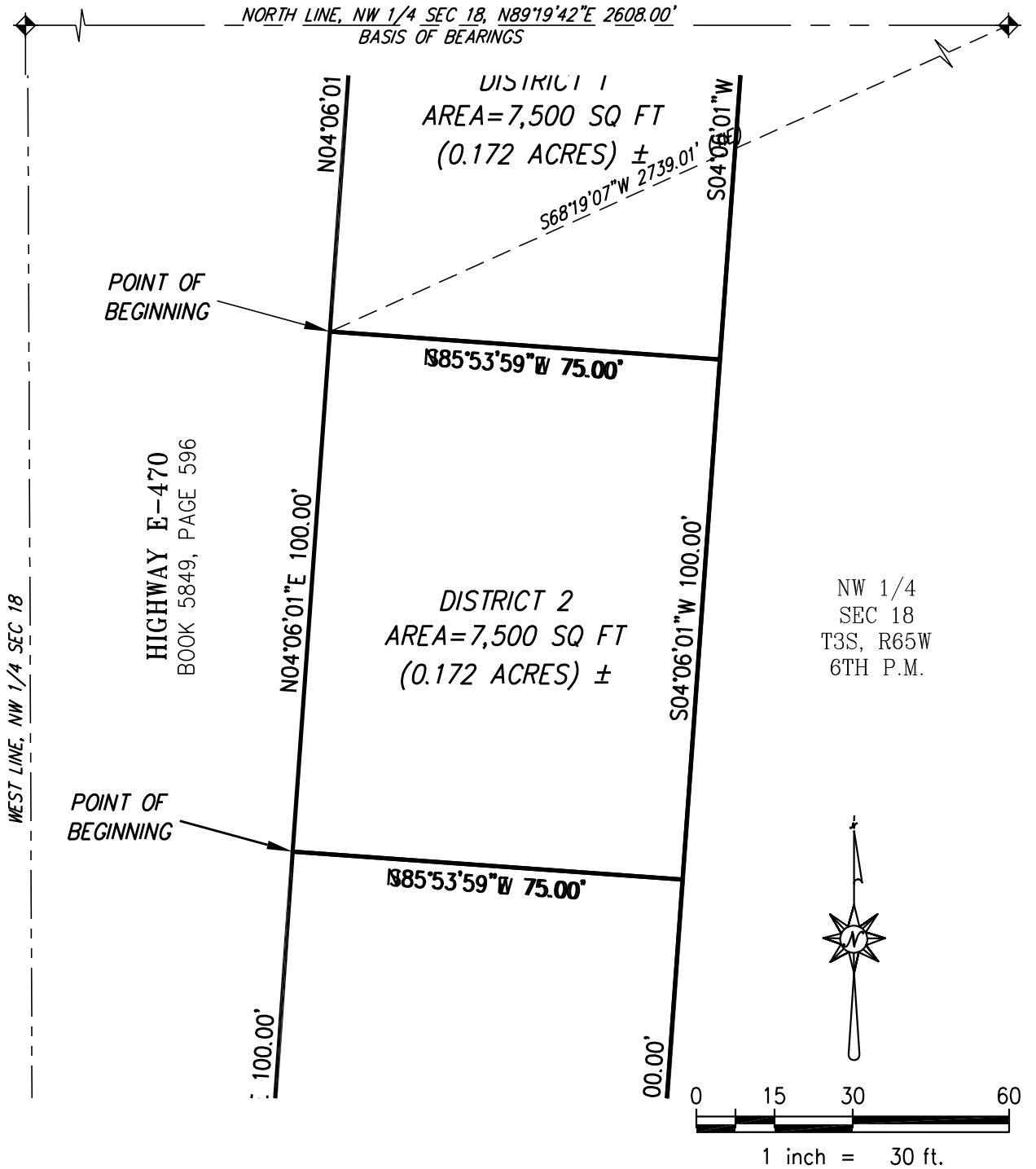
KENNETH G. OUELLETTE, P.L.S. 24673
 DATE: MAY 16, 2021
 JOB NO. 65420899
 FOR AND ON BEHALF OF MERRICK & COMPANY

 5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111 Telephone: 303-751-0741	WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2 EXHIBIT A	DATE: 5/6/21
		SHEET: 1 OF 1

ILLUSTRATION FOR A-3

NW COR SEC 18
#6 REBAR WITH 3-1/4" ALUM. CAP
STAMPED: PLS 24313

POINT OF COMMENCEMENT
N 1/4 CORNER SEC 18
#6 REBAR WITH 2-1/2" ALUM. CAP
STAMPED: PLS 38058



This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.

MERRICK®
5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2
EXHIBIT C-1

DATE: 5/6/21

SHEET: 1 OF 1

EXHIBIT B
BUDGET

Windler Business Improvement District #2
Proposed Budget
General Fund
For the Year ended December 31, 2021 and December 31, 2022

	Actual <u>2020</u>	Proposed Budget <u>2021</u>	Estimate <u>2021</u>	Proposed Budget <u>2022</u>
Beginning fund balance	\$ -	\$ -	\$ -	\$ -
Revenues:				
Developer advances	-	50,000	50,000	50,000
Total revenues	-	50,000	50,000	50,000
Total funds available	-	50,000	50,000	50,000
Expenditures:				
Accounting / audit	-	5,000	5,000	5,000
Directors fees	-	900	900	1,800
Insurance/SDA dues	-	2,500	2,500	2,500
Legal	-	22,500	22,500	22,500
Management	-	3,500	3,500	3,500
Miscellaneous	-	2,000	2,000	2,000
Contingency	-	12,508	13,600	11,581
Emergency reserve (3%)	-	1,092	-	1,119
Total expenditures	-	50,000	50,000	50,000
Ending fund balance	\$ -	\$ -	\$ -	\$ -
Assessed valuation		\$ -		\$ -
Mill Levy		-		-

EXHIBIT C

DISTRICT CONTACT INFORMATION

District Contact:

Clint C. Waldron, Esq.
2154 E Commons Avenue, Suite 2000
Centennial, CO 80122
Work: 303-858-1800
Email: cwaldron@wbapc.com

Megan J. Murphy, Esq.
2154 E Commons Avenue, Suite 2000
Centennial, CO 80122
Work: 303-858-1800
Email: mmurphy@wbapc.com

INTERGOVERNMENTAL AGREEMENT BETWEEN
THE CITY OF AURORA, COLORADO AND
WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2

THIS AGREEMENT is made and entered into as of this ____ day of _____, 2021, by and between the CITY OF AURORA, a home-rule municipal corporation of the State of Colorado (the “City”), and WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”). The City and the District are collectively referred to as the “Parties.”

RECITALS

WHEREAS, the District was organized to provide those services and to exercise powers as are more specifically set forth in the District’s 2021 Operating Plan and Budget (“**Operating Plan**”) approved by the City on September 13, 2021; and

WHEREAS, the City and the District have determined it to be in the best interests of their respective taxpayers and property owners to enter into this Intergovernmental Agreement (“**Agreement**”).

NOW, THEREFORE, in consideration of the covenants and mutual agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

DEFINITIONS

ARI or Regional Improvements: means Aurora Regional Improvements.

ARI Authority: means one or more Authorities established by an ARI Authority Establishment Agreement.

ARI Establishment Agreement: means an intergovernmental agreement establishing an ARI Authority which has, at minimum, Colo. Rev. Stat., title 32 Special Districts or title 31 Business Improvement Districts from three (3) or more Approved Development Plan areas as parties to the Agreement.

ARI Master Plan: means one or more master plans adopted by an ARI Authority establishing Regional Improvements which will benefit the taxpayers and service users of the District which constitute such ARI Authority, which master plan will change from time to time.

ARI Mill Levy: means five (5) mills if the District has executed an ARI Establishment Agreement or such lesser amount as is necessary to satisfy any debt issued by such ARI Authority, or, in the event the District has not executed an ARI Establishment Agreement within one (1) year following the date of approval of the Operating Plan, then, the following:

A. The mill levy imposed for payment of the costs of the planning, design, permitting, construction, acquisition and financing of the improvements described in the ARI Master Plan, which: (i) shall be one (1) mill for collection beginning for each district in the first year of collection of a mill levy by such district and continuing in each year thereafter through the twentieth (20th) year; (ii) shall be one and one-half (1.5) mills from the twenty-first (21st) year through the date of repayment of debt incurred for Public Improvements, other than Regional Improvements; and (iii) for five (5) years thereafter, the mill levy shall be the lesser of twenty (20) mills or a mill levy equal to the average debt service mill levy imposed by such district in the ten (10) years prior to the date of repayment of debt issued for Public Improvements, other than Regional Improvements; and

B. Any district may, pursuant to any intergovernmental agreement with the City, extend the term for application of the ARI Mill Levy beyond the years set forth in (A) above.

C. All mills described in this ARI Mill Levy definition shall be subject to adjustment as follows: On or after January 1, 2004, if there are changes in the method of calculating assessed valuation or any constitutionally mandated tax credit, cut or abatement; the one (1) mill levy described above may be increased or decreased to reflect such changes, such increases or decreases to be determined by the Board in good faith (such determination to be binding and final) so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

Regional Improvements: means public improvements and facilities that benefit the Service Area and which are to be financed through the ARI Mill Levy.

COVENANTS AND AGREEMENTS

1. Improvements Dedication. The District shall dedicate the Public Improvements (as referenced in the Operating Plan) to the City or other appropriate jurisdiction or owners association in a manner consistent with the Approved Development Plan and other rules and regulations of the City and applicable provisions of the City Code.

2. Issuance of Privately Placed Debt. Prior to the issuance of any privately placed Debt, the District shall obtain the certification of an External Financial Advisor substantially as follows:

We [I] certify that (1) the net effective interest rate (calculated as defined in § 32-1-103(12), C.R.S.), to be borne by [insert the designation of the Debt] does not exceed a reasonable current [tax-exempt] [taxable] interest rate, using criteria deemed appropriate by us [me] and based upon our [my] analysis of comparable high yield securities; and (2) the structure of [insert designation of the Debt], including maturities and early redemption provisions, is reasonable

considering the financial circumstances of the District.

3. Debt Issuance Limitation. The District shall not be authorized to incur any indebtedness until such time as the District has approved and executed this IGA.

4. Monies from Other Governmental Sources. The District shall not apply for or accept Conservation Trust Funds, Great Outdoors Colorado Funds, or other funds available from or through governmental or non-profit entities that the City is eligible to apply for, except pursuant to an intergovernmental agreement with the City. This Section shall not apply to specific ownership taxes which shall be distributed to and a revenue source for the District without any limitation.

5. Bankruptcy. All of the limitations contained in the Operating Plan, including, but not limited to, those pertaining to the maximum mill levy have been established under the authority of the City to approve an Operating Plan with conditions. It is expressly intended that such limitations:

(a) Shall not be subject to set-aside for any reason or by any court of competent jurisdiction, absent an amendment to the Operating Plan; and

(b) Are, together with all other requirements of Colorado law, included in the “political or governmental powers” reserved to the State under the U.S. Bankruptcy Code, 11 U.S.C. § 903, and are also included in the “regulatory or electoral approval necessary under applicable non-bankruptcy law” as required for confirmation of a Chapter 9 Bankruptcy Plan under 11 U.S.C. § 943(b)(6).

Any Debt, issued with a pledge or which results in a pledge, that exceeds the maximum mill levy shall not be an authorized issuance of Debt unless and until approved by the City.

6. Dissolution. Upon an independent determination of the City Council that the purposes for which the District was created have been accomplished, the District agrees to file appropriate dissolution documents, pursuant to the applicable State statutes. In no event shall a dissolution occur until the District has provided for the payment or discharge of all of their outstanding indebtedness and other financial obligations as required pursuant to § 31-25-1225, C.R.S..

7. Operating Plan and Budget. The District shall be responsible for submitting an operating plan and budget with the City Clerk no later than September 30th of each year.

8. Regional Improvements. The District shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation and/or redevelopment and a contribution to the funding of the Regional Improvements and fund the administration and overhead costs related to the provision of the Regional Improvements.

The District shall impose the ARI Mill Levy and shall convey it as follows:

(a) If the District has executed an ARI Authority Establishment Agreement and the City has been offered the opportunity to execute an ARI Authority Establishment Agreement, the terms of which provide for the City to appoint no less than thirty percent (30%) and no more than forty-nine percent (49%) of the Board members who will serve as the board of directors of the ARI Authority to be established by such ARI Authority Establishment Agreement, regardless as to whether the City approves the execution of such ARI Authority Establishment Agreement, the revenue from the ARI Mill Levy shall be conveyed to the ARI Authority for the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements in the ARI Master Plan and for the operations of such ARI Authority; or

(b) If the City and the District have executed an intergovernmental agreement then the revenue from the ARI Mill Levy or ARI Payment in Lieu of Taxes shall be conveyed to the City for use in planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users and taxpayers of the District in accordance with such agreement; or

(c) If neither of the above is applicable, then the revenue shall be conveyed to the City and (i) the City shall place in a special account all revenues received from the ARI Mill Levy and shall not expend such revenue until an intergovernmental agreement is executed between the District establishing the terms and conditions for the provision of the Regional Improvements; and (ii) if the intergovernmental agreement is not executed within two (2) years from the date of the approval of the Operating Plan by the City and neither of the above have occurred within two (2) years from the date of the approval of the Operating Plan by the City, then the revenue from the ARI Mill Levy shall be conveyed to the City for use by the City in the planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing of the Regional Improvements which benefit the service users or taxpayers of the District as prioritized and determined by the City.

As set forth in the definition of the ARI Mill Levy, the District may, pursuant to any intergovernmental agreement with the City, extend the terms for application of the ARI Mill Levy beyond the years set forth in this section.

The Regional Improvements shall be limited to the provision of the planning, design, acquisition, construction, installation, relocation and/or redevelopment of street and transportation related improvements and the administration and overhead costs incurred therefrom, unless the City has agreed otherwise in writing; provided, however in no event shall the Regional Improvements include water or sanitary sewer improvements unless such improvements are necessary as a part of completing street and transportation related improvements. The District shall cease to be obligated to impose, collect and convey to the City the revenue from the ARI Mill Levy at such time as the area within the District's boundaries is included within a different district organized under the Special District Act or a General Improvement District organized under C.R.S. §§ 31-25- 601, *et seq.*, or Business Improvement District organized under C.R.S. §§ 31-25-1201, *et seq.*, which other district has been organized to fund a part or all of the Regional Improvements.

9. Maximum Debt Mill Levy. The maximum debt mill levy shall be the maximum mill levy the District is permitted to impose upon the taxable property within the District, and shall

be 50 mills as may be adjusted so that to the extent possible, the actual tax revenues generated by the mill levy, as adjusted for changes occurring after January 1, 2004, are neither diminished nor enhanced as a result of such changes, for purposes of the foregoing, a change in the ratio of actual valuation shall be deemed to be a change in the method of calculating assessed valuation.

10. Notices. All notices, demands, requests or other communications to be sent by one party to the other hereunder or required by law shall be in writing and shall be deemed to have been validly given or served by delivery of same in person to the address or by courier delivery, via United Parcel Service or other nationally recognized overnight air courier service, or by depositing same in the United States mail, postage prepaid, addressed as follows:

To the District: Windler Business Improvement District No. 2
2154 East Commons Avenue, Suite 2000
Centennial, CO 80122
Attn: Clint Waldron, Esq.
Phone: (303) 858-1800
Fax: (303) 858-1801

To the City: City of Aurora
15151 E. Alameda Pkwy., 5th Floor
Aurora, CO 80012
Attn: Michael Hyman, City Attorney
Phone: (303) 739-7030
Fax: (303) 739-7042

All notices, demands, requests or other communications shall be effective upon such personal delivery or one (1) business day after being deposited with United Parcel Service or other nationally recognized overnight air courier service or three (3) business days after deposit in the United States mail. By giving the other party hereto at least ten (10) days written notice thereof in accordance with the provisions hereof, each of the Parties shall have the right from time to time to change its address.

11. Amendment. This Agreement may be amended, modified, changed, or terminated in whole or in part only by a written agreement duly authorized and executed by the Parties hereto and without amendment to the Operating Plan.

12. Assignment. Neither Party hereto shall assign any of its rights nor delegate any of its duties hereunder to any person or entity without having first obtained the prior written consent of the other Party, which consent will not be unreasonably withheld. Any purported assignment or delegation in violation of the provisions hereof shall be void and ineffectual.

13. Default/Remedies. In the event of a breach or default of this Agreement by any Party, the non-defaulting Party shall be entitled to exercise all remedies available at law or in equity, specifically including suits for specific performance and/or monetary damages. In the event of any proceeding to enforce the terms, covenants or conditions hereof, the prevailing Party in such proceeding shall be entitled to obtain as part of its judgment or award its reasonable attorneys'

fees.

14. Governing Law and Venue. This Agreement shall be governed and construed under the laws of the State of Colorado.

15. Inurement. Each of the terms, covenants and conditions hereof shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns.

16. Integration. This Agreement constitutes the entire agreement between the Parties with respect to the matters addressed herein. All prior discussions and negotiations regarding the subject matter hereof are merged herein.

17. Parties Interested Herein. Nothing expressed or implied in this Agreement is intended or shall be construed to confer upon, or to give to, any person other than the District and the City any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the District and the City shall be for the sole and exclusive benefit of the District and the City.

18. Severability. If any covenant, term, condition, or provision under this Agreement shall, for any reason, be held to be invalid or unenforceable, the invalidity or unenforceability of such covenant, term, condition, or provision shall not affect any other provision contained herein, the intention being that such provisions are severable.

19. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document.

20. Paragraph Headings. Paragraph headings are inserted for convenience of reference only.

21. Defined Terms. Capitalized terms used herein and not otherwise defined shall have the meanings ascribed to them in the Operating Plan.

[SIGNATURE PAGE TO INTERGOVERNMENTAL AGREEMENT]

WINDLER BUSINESS IMPROVEMENT
DISTRICT NO. 2

By: _____
Officer of the District

Attest:

Secretary

CITY OF AURORA, COLORADO

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk



BRIAN J. RULLA, Asst. City Attorney

ORDINANCE NO. 2021 _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ORGANIZING WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2; PROVIDING FOR AN ELECTION OF THE BOARD OF DIRECTORS OF THE DISTRICT; AND APPROVING THE 2019 OPERATING PLAN AND BUDGET FOR THE DISTRICT

WHEREAS, the City Council of the City of Aurora, Colorado (the “City”), has received a petition for the organization of the Windler Business Improvement District No. 2 within the City (the “District”); and

WHEREAS, based upon the petition for organization (the “Petition”) and other evidence presented to the City Council, the Petition has been signed in conformity with the Business Improvement District Act, Section 31-25-1201 et seq., C.R.S. (the “Act”), the signatures on the Petition are genuine, and the signatures of petitioners represent the persons who own real or personal property in the service area of the proposed District having a valuation for assessment of not less than fifty percent of the valuation for assessment of all real and personal property in the service area of the proposed District and who own at least fifty percent of the acreage in the proposed District; and

WHEREAS, the petitioners have also caused a copy of the District’s 2019 Operating Plan and Budget (the “Operating Plan”) to be submitted at the same time as the Petition; and

WHEREAS, all non-commercial properties within the boundaries of the District, if any, as required by Section 31-25-1208, C.R.S., are excluded; and

WHEREAS, the commercial property owners of the proposed District request that the City designate the territory within the service area of the proposed District as a location for new business or commercial development under Section 31-25-1203 (10), C.R.S.; and

WHEREAS, the Petition contains the items required by the Act including, among other things:

(a) The name of the District, which is to be “Windler Business Improvement District No. 2”; and

(b) A general description of the boundaries and service area of the District is approximately 1 acres of vacant land located west of Harvest Road, north of E. 42nd Avenue, south of E. 56th Avenue and east of E-470, City of Aurora, Adams County, Colorado. The District's boundaries are the territory of the commercial property, as defined in the Act, within the above service area; and

(c) A general description of the types of services or improvements or both to be provided by the proposed District; and

(d) The names of three persons to represent the petitioners, who have the power to enter into agreements relating to the organization of the District; and

(e) A request that City Council appoint the initial members of the Board of Directors pursuant to Section 31-25-1209(1)(b) of the Act, and provide for an election of subsequent members of the Board of Directors of the District pursuant to Section 31-25-1209(1)(d), of the Act; and

(f) A request that City Council approve the Operating Plan and Budget; and

(g) A request that City Council approve the organization of the District; and

WHEREAS, sufficient genuine signatures exist on the Petition of persons who are qualified to sign such Petition; and

WHEREAS, City Council has determined that the allegations of the Petition are true; and

WHEREAS, the Petition provided that, upon the request of the City, the petitioners for the District will execute a bond or provide a cash deposit sufficient to cover all expenses anticipated to be incurred by the City in connection with the proceedings in case the organization of the District is not effected; and

WHEREAS, the service area of the proposed District is entirely within the City and is a location for new business or commercial development; and

WHEREAS, a legal description of the service area and boundaries of the proposed District is attached hereto as Exhibit A and is incorporated herein by reference; and

WHEREAS, City Council has determined that the types of services or improvements to be provided by the proposed District are of the type which best satisfy the purposes of the Act; and

WHEREAS, the City Council has held and concluded a public hearing on the matter following due notice of such hearing as required by law.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO THAT:

Section 1. Pursuant to its authority to organize business improvement districts under the Act, and specifically Section 31-25-1207(5), C.R.S., the City Council, as the governing body of the City, hereby adjudicates all questions of jurisdiction to find that jurisdiction is vested in the City Council to organize the business improvement district described in the Petition submitted by the petitioners for the Windler Business Improvement District No. 2.

Section 2. The City Council hereby declares the organization of the District in a location designated by the City as location for new business or commercial development, which shall have the service area and boundaries set forth in the attached Exhibit A.

Section 3. The District shall be a quasi-municipal corporation and political subdivision of the State of Colorado with all powers and responsibilities thereof. The District shall hereafter have the corporate name specified in the Petition: “Windler Business Improvement District No. 2.”

Section 4. Pursuant to Section 31-25-1209(1)(b), C.R.S., the City Council may appoint the initial members of the Board of Directors of the District (the “Board”). The initial Board shall have five (5) members and each member shall be an elector of the District, as that term is defined in Section 31-25-1203 (4)(a), C.R.S. The City Council hereby appoints the following five (5) members of the Board of the District:

- 1) Christopher H. Fellows;
- 2) Dustin Anderson;
- 3) Timothy O’Connor;
- 4) Vacant; and
- 5) Vacant.

Subsequent members of the Board will be elected at regular elections, pursuant to C.R.S. § 31-25-1209(1)(d), and thereafter at regular elections pursuant to the laws of the State of Colorado and the Operating Plan. The term of office for the members shall be four (4) years and as otherwise provided pursuant to article 1 of title 32, C.R.S. Within thirty (30) days after a vacancy occurs, a successor shall be appointed by resolution of City Council to serve until the next regular election.

Section 5. Each member, within thirty days after his or her election or appointment to fill a vacancy, except for good cause shown, shall appear before an officer authorized to administer oaths and take an oath that he or she will faithfully perform the duties of his or her office as required by law and will support the constitution of the United States, the constitution of the state of Colorado, and the laws made pursuant thereto. The Board shall carry out the responsibilities required of such Board by the Act and other applicable law.

Section 6. In accordance with Section 31-25-1211, C.R.S., the Operating Plan is hereby approved. Beginning in 2022 (for use in 2023), an annual Operating Plan and Budget will be submitted to City Council, with a copy to the designated municipal official, on or before September 30th of each year, in accordance with § 31-25-1211, C.R.S. The review, processing and approval of the budget is subject to fees as approved by the City of Aurora.

Section 7. The Board shall file its future operating plans and budgets and amendments thereto with the City Clerk for the approval of the City Council as provided in Section 31-25-1211, C.R.S.

Section 8. The actions of the City Clerk, petitioners, and designated election official in setting and providing public notice of the public hearing on the Petition are hereby ratified and confirmed.

Section 10. The City Council hereby approves the Intergovernmental Agreement between the City of Aurora Colorado and the District, as presented in this meeting, with such technical variations, additions, or deletions therein as the City Attorney shall deem necessary or appropriate, and not inconsistent with the approval thereof by this Ordinance.

Section 11. All acts, orders, resolutions, ordinances, or parts thereof, in conflict with this Ordinance are hereby repealed, except that this section shall not be construed so as to revive any act, order, resolution, or ordinance, or part thereof previously repealed.

Section 12. Pursuant to Section 5-5 of the City Charter, 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 _____, 2021.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

 *C McK*

BRIAN J. RULLA, Asst. City Attorney

Exhibit A
Windler Business Improvement District No. 2 Boundaries

A-3

NW 1/4, SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST 6th P.M.
-----CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO-----

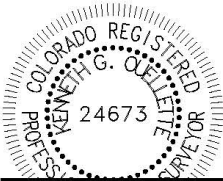
PROPERTY DESCRIPTION

A PARCEL OF LAND BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN, CITY OF AURORA, COUNTY OF ADAMS, STATE OF COLORADO AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEARINGS ARE ASSUMED AND ARE BASED ON THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 18, TOWNSHIP 3 SOUTH, RANGE 65 WEST OF THE 6TH PRINCIPAL MERIDIAN AS BEARING N89°19'42"E A DISTANCE OF 2608.00 FEET BETWEEN THE NORTHWEST CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH 3-1/4" ALUMINUM CAP STAMPED: PLS 24313 AND THE NORTH QUARTER CORNER OF SAID SECTION 18 BEING MONUMENTED BY A #6 REBAR WITH A 2-1/2" ALUMINUM CAP STAMPED: PLS 38058.

COMMENCING AT SAID NORTH QUARTER CORNER OF SECTION 18;
THENCE S68°19'07"W A DISTANCE OF 2739.01 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 RECORDED IN BOOK 5849 AT PAGE 596 IN THE OFFICE OF THE ADAMS COUNTY CLERK AND RECORDER, SAID POINT BEING THE **POINT OF BEGINNING**;
THENCE S85°53'59"E A DISTANCE OF 75.00 FEET;
THENCE S04°06'01"W A DISTANCE OF 100.00 FEET;
THENCE N85°53'59"W A DISTANCE OF 75.00 FEET TO A POINT ON SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470;
THENCE N04°06'01"E ALONG SAID EASTERLY RIGHT-OF-WAY LINE OF HIGHWAY E-470 A DISTANCE OF 100.00 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 7,500 SQUARE FEET (0.172 ACRES), MORE OR LESS.



KENNETH G. OUELLETTE, P.L.S. 24673
DATE: MAY 6, 2021
JOB NO. 65420899
FOR AND ON BEHALF OF MERRICK & COMPANY



MERRICK®
5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2
EXHIBIT A

DATE: 5/6/21

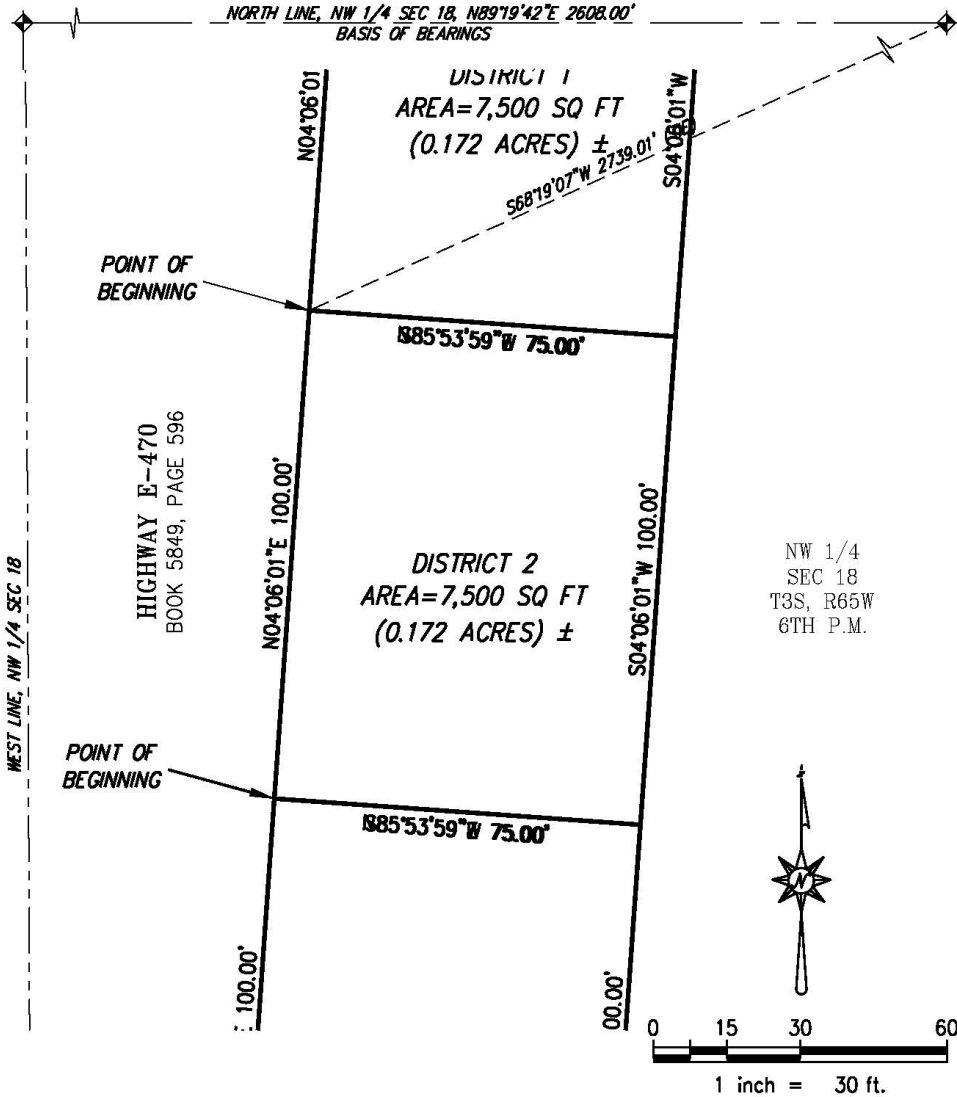
SHEET: 1 OF 1

Q:\DEN\Projects\0898-00-Windler Metro Districts\Design\Survey\dwg\District Parcels.dwg

ILLUSTRATION FOR
A-3

NW COR SEC 18
#6 REBAR WITH 3-1/4" ALUM. CAP
STAMPED: PLS 24313

POINT OF COMMENCEMENT
N 1/4 CORNER SEC 18
#6 REBAR WITH 2-1/2" ALUM. CAP
STAMPED: PLS 38058



This illustration does not represent a monumented survey. It is intended only to depict the attached legal description.



MERRICK®

5970 Greenwood Plaza Blvd., Greenwood Village, CO 80111
Telephone: 303-751-0741

WINDLER BUSINESS IMPROVEMENT DISTRICT NO. 2
EXHIBIT C-1

DATE: 5/6/21

SHEET: 1 OF 1

Q:\DEN\Projects\0898-00-Windler Metro Districts\Design\Survey\dwg\District Parcels.dwg



CITY OF AURORA

Council Agenda Commentary

Item Title: Consideration to appoint (3) three members to the Parks & Recreation Advisory Board
Item Initiator: Brooke Bell, Director of Parks and Recreation and Open Space
Staff Source/Legal Source: Kadee Rodriguez, City Clerk, General Management/ Dave Lathers, Senior Assistant
Outside Speaker: N/A
Council Goal: 2012: 4.1--Develop and maintain high quality parks, rec facilities/programs, libraries, natural areas, trails and open space

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
Why is a waiver needed? [Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

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

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

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

The Parks & Recreation Board is made up of 9 members appointed to 4-year terms, and members may serve up to three terms. There are currently three vacancies. The committee received three applications and interviewed three candidates on July 28, 2021.

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

The Parks and Recreation Advisory Board's role is to advise City Council on matters pertaining to the planning, regulation and use of the City owned and controlled parks, recreation areas and facilities, recreation program and leagues both within and without the corporate bounds of the city.

QUESTIONS FOR COUNCIL

Does the City Council support these appointments and wish to move this item to the formal regular Council meeting?

LEGAL COMMENTS

The parks and recreation board shall have the obligation and function to advise the council upon such matters as shall pertain to the planning or regulation of city-owned and controlled parks, recreational areas, and facilities and recreation programs, both within and without the corporate bounds of the city, and the board shall have further authority to recommend to the council the purchase of equipment for use in the various parks, playgrounds and recreataional areas either within or without the city. (City Code Section 98-28). (Lathers)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain:

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain:



TO: Mayor Mike Coffman
Members of City Council

THROUGH: Kadee Rodriguez, City Clerk
Patricia Varney, City Clerk Analyst
Brooke Bell, Director of Parks, Recreation and Open Space Department

FROM: Joe Sack, Manager of Recreation Division

DATE: July 28, 2021

SUBJECT: Parks and Recreation Advisory Board Appointments

The Parks and Recreation Advisory Board’s role is to advise City Council on matters pertaining to the planning, regulation and use of City owned and controlled parks, recreation areas and facilities, recreation programs and leagues both within and without the corporate bounds of the city.

The Board is made up of 9 members appointed to 3-year terms, and members may serve up to three terms. There are currently three vacancies. The committee received three (3) applications and interviewed three (3) candidates on July 28, 2021.

Sydney Futrell - Ward III. Ms. Futrell has an extensive volunteer, non-profit and fundraising background. She believes the most important services PROS provides to the community are creating a clean, healthy city to live in; providing accessibility to all and ensuring positive experiences for citizens through parks, recreation centers and programs.

Andre Hickman – Ward III - Mr. Hickman is a special education teacher and has volunteered with Colorado Outdoors. He believes the most important services PROS provides to the community are vibrant, inclusive parks, facilities, programs and community outreach. His focus is to be a voice for the community.

Bryon Taylor – Ward V - Mr. Taylor is an avid user of Aurora’s trails system and a volunteer with Building a Better Colorado and National Dog Rescue Network. He believes the most important services PROS provides to the community are quality parks, open space, trails, golf courses and enrichment programs.

In conclusion, the Parks and Recreation Advisory Board respectfully suggests the appointment of Sydney Futrell, Andre Hickman and Bryon Taylor.

Date: 07/25/2021
Ward No: 3
Board/Commission Applying For: Parks and Recreation Board

Name: Andre Hickman
Home Address: 1048 S Evanston St. # 206
City: Aurora
Zip: 80012
How Long in Aurora: 36 yr
Register to Vote: Yes

EDUCATION:

Years Completed: 4
Degree(s): Bachelor's Degree(Special Education)
Colleges: Metro State University

EMPLOYMENT:

Employer Name: Denver Children's Home Employer Address: 1501 Albion St, Denver, CO 80220
Position: Youth Treatment Counselors
How Long?: 1 1/2
Work Experience: Youth Treatment Counselor Asst. Director before and After school (APS) Special Education Para (APS)
Certifications:

COMMUNITY INVOLVEMENT:

Involvement: Zero
Do you Presently Serve in Any Other Appointed Position on a Board, Commission or Committee?: No If Yes, what position:

INTERESTS/ACTIVITIES:

Interests/Activities: Theatre Acting Teaching Bike Riding

APPOINTMENT:

Why do you desire this appointment? Because with all of the open space in the city there seems not be the input of someone in the Special education word thus the level of inclusion at our parks and open spaces is lacking How much time do you anticipate being able to spend on this appointment each month?: Enough to meet my obligation

PLEASE GIVE THREE REFERENCES:

Name: Mark Rhoads
Address:

Phone:

Name: Austin

Address:

Phone:

Name: Alex

Address:

Phone:

Date: 03/04/2021
Ward No: V
Board/Commission Applying For: Parks and Recreation Board

Name: Bryon Taylor
Home Address: 15947 E Mercer Cir
City: Aurora
Zip: 80013
How Long in Aurora: 5 yrs
Register to Vote: Yes

EDUCATION:

Years Completed: 4
Degree(s): N/A
Colleges: Technical

EMPLOYMENT:

Employer Name: Influence Technologies Employer Address: 3457 Ringsby Ct #111, Denver, CO 80216
Position: Chief Digital Officer
How Long?: 4 years
Work Experience: President, National Dog Rescue Network | Digital Director, Vladimir Jones | Digital Director, Modular Workshop | Digital Director, BanTV Productions
Certifications: Member, Project Management Institute (14 yrs), Google Studio, Dynamic Creative, Google Ads Manager

COMMUNITY INVOLVEMENT:

Involvement: Coordinating park cleanups in Aurora for 2 years Do you Presently Serve in Any Other Appointed Position on a Board, Commission or Committee?: No If Yes, what position:

INTERESTS/ACTIVITIES:

Interests/Activities: Sunrise hikes in Cherry Creek state park and trails, responsible dog ownership, technology, reading, and nature/outdoors.

APPOINTMENT:

Why do you desire this appointment? I am a fan of Aurora's park systems, trails, and responsible use of our parks and open space. I walk miles of Aurora trail systems every morning, and have for years. I believe I can provide resources to the board regarding digital and technical efforts, and have 25 years experience in digital development.

How much time do you anticipate being able to spend on this appointment each month?: 20 hours

PLEASE GIVE THREE REFERENCES:

Name: Jeff Swaim
Address: 1312 17TH ST UNIT 787

Phone:

Name: Heather Bennett

Address: 3241 S Flamingo Way

Phone:

Name: Thomas Fowler

Address: 15927 E Flora Pl, Aurora, CO 80013

Phone:

Date: 06/29/2021
Ward No: 3
Board/Commission Applying For: Parks and Recreation

Name: Sydney Futrell
Home Address: 489 S. Kingston Circle
City: Aurora
Zip: 80012
How Long in Aurora: 3 yrs
Register to Vote: Yes

EDUCATION:

Years Completed: 20
Degree(s): MBA, MALS, BA
Colleges: University of Denver and Metro State

EMPLOYMENT:

Employer Name: Big Green Employer Address: 1101 W. 120th Ave Suite 400 Broomfield
Position: Director of Grants and Foundations How Long?: 3 months Work Experience:
www.linkedin.com/in/sydneyfutrell Please find a full description of my work experience a the link
above. I have extensive experience in public service and non-profit management.
Certifications:

COMMUNITY INVOLVEMENT:

Involvement: U.S. Peace Corps 2008-2011 and Mile High United Way Volunteer 2018-current Do you
Presently Serve in Any Other Appointed Position on a Board, Commission or Committee?: No If Yes,
what position:

INTERESTS/ACTIVITIES:

Interests/Activities: Swimming, biking, walking, hiking, playing outside, gardening, cross country skiing,
public service, volunteerism.

APPOINTMENT:

Why do you desire this appointment? I just bought a home on Expo Park in Aurora. My children utilize
the Parks and Rec system. Also, my husband's family has a long history of service to the City of Aurora
and I want to join that legacy. Plus, I am qualified to help.
How much time do you anticipate being able to spend on this appointment each month?: 10 hours

PLEASE GIVE THREE REFERENCES:

Name: Adrian Puryear

Address: 12190 E. Villanova Drive Aurora, CO 8001

Phone:

Name: JoAnn Marsh

Address:

Phone:

Name: Molly Barfuss

Address: 2079 S. Humboldt St Denver, CO 80210

Phone:



CITY OF AURORA

Council Agenda Commentary

Item Title: Consideration to appoint one member to the Immigrant and Refugee Commission
Item Initiator: Roberto Venegas, Deputy City Manager
Staff Source/Legal Source: Ricardo Gambetta, Manager, Office of International & Immigrants Affairs/D. Lathers, COA
Outside Speaker: N/A
Council Goal: 2012: 1.2--Develop neighborhood and community relationships

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

- Approve Item as proposed at Study Session
 - Information Only
 - Approve Item and Move Forward to Regular Meeting
 - Approve Item as proposed at Regular Meeting
 - Approve Item with Waiver of Reconsideration
- Why is a waiver needed? [Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

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

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

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

The Aurora Immigrant & Refugee Commission consist of eleven (11) voting members appointed by the Aurora City Council. The AIRC has two open positions that are in need to be filled due to resignation of 2 current members. The AIRC decided to invite a couple of very impressive applicants from previous pool of applicants. As the AIRC reviewed the applications, one candidate withdrew his application. The AIRC conducted interviews with one applicant on June 14, 2021.

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

Members of the Aurora Immigrant & Refugee Commission serve on a two year term. On behalf of the Chair and the Vice Chair of the Aurora Immigrant & Refugee Commission, we are recommending the City Council approve the appointment of Salvador Cazun.

QUESTIONS FOR COUNCIL

Does the City Council wish to move this item forward to the formal agenda?

LEGAL COMMENTS

Unless otherwise provided by the Charter, all boards and commissions shall be appointed by Council, shall be advisory in character and shall have such powers and perform such duties as are provided by the Charter or by Ordinance. (City Charter Article 9-1). The membership of the commission shall make a good faith effort to fully represent the diversity of the immigrant and refugee community. The Aurora Immigrant and Reugee Commission shall consist of 11 members who are residents of the City of Aurora. (Sec. 2-877 of the City Code)(Lathers).

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain:

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain:



TO: Mayor Coffman & Members of City Council

THROUGH: Roberto Venegas, Deputy City Manager

FROM: Ricardo Gambetta, Manager Office of International & Immigrants Affairs

DATE: June 30, 2021

SUBJECT: AIRC Appointment

June 30, 2021

Dear Mayor Coffman & Members of City Council,

The Aurora Immigrant and Refugee Commission (AIRC) consists of eleven (11) voting members appointed by the Aurora City Council. The AIRC has 2 open positions that need to be filled due to resignation of 2 current members. The AIRC decided to invite couple very impressive applicants from previous pool of applicants. As the AIRC reviews the applications, 1 candidate withdrew his application. The AIRC conducted interviews with 1 applicant on June 14, 2021. On behalf of the Chair and Vice Chair of the Aurora Immigrant and Refugee Commission, we are recommending the City Council approve the following action:

1- Appointment of new members,

Salvador Cazun: Commission members were very impressed with the community involvement that Mr. Cazun has working with local Salvadoran/Hispanic groups and organizations, including SARCO. He serves as a community volunteer and has been involved in several local COVID Vaccination efforts across the city. His experience working as a Criminal Defense Lawyer in El Salvador will be invaluable to the AIRC.

There will be still 1 open position and AIRC & OIIA will diligently look for qualified applicants who could fill those open positions.

Thank you for your consideration and please let me know if you have any questions or concerns.

Date: 7/22/21

City of Aurora
APPLICATION FOR APPOINTMENT
PLEASE TYPE OR PRINT CLEARLY

Ward No.

Board/Commission Applying For: Immigrant and Refugee Commission

PERSONAL INFORMATION:

Name: Salvador Cazun		How long in Aurora?: 2 years	
Home Address: 11697 E Virginia Pl		Zip: 80012	
E-mail address:	Date of Birth: 1/1	Home Phone:	Work Phone:

HIGHEST LEVEL OF EDUCATION OR DEGREE EARNED:

Yrs. Completed: 5	Degree(s): Bachelor Degree (Law in EL SALVADOR)
Colleges: Abroad.	

EMPLOYMENT:

Employer Name/Address: Littleton Public Schools Crocker St, Littleton CO 80120	Position: Building facilitator	How long? 4 years
Work Experience:	Certifications:	

COMMUNITY INVOLVEMENT:

Active member of a Non-Profit that supports the immigrant community

DO YOU PRESENTLY SERVE IN ANY OTHER APPOINTED POSITION ON A BOARD, COMMISSION OR COMMITTEE? Yes No

If yes, what position:

INTERESTS/ACTIVITIES:

Volunteer / sports / Recreation

WHY DO YOU DESIRE THIS APPOINTMENT:


To serve and support this community

PLEASE GIVE THREE REFERENCES:

Name: Rene Mejia	Address: 2200 Chambers Rd Aurora CO 80011	Phone:
Name: Manuel Castillo	Address: 1450 S Havana St Aurora CO 80012	Phone: 7
Name: Claudia Flores	Address: 1324 S Fulton Way Denver CO 80247	

I certify that the foregoing information is true and correct.

Salvador Cazun
(Volunteer's name printed)


(Volunteer's signature)

7/22/21
(Date)

SEND COMPLETED FORM TO:
CITY CLERK'S OFFICE, 15151 E. Alameda Parkway, Suite 1400, Aurora, CO 80012
PHONE: 303-739-7094 FAX: 303-739-7520.

(-OVER-)

How did you hear about us:

Newspaper: _____
News Aurora (water bill newsletter)
Channel 8
Word of Mouth
Other: Partner in the
non-profit told me.

Ethnic Background:

- White
- Black/African American
- Hispanic/Latino
- Asian
- Native Hawaiian or other Pacific Islander
- American Indian or Alaska Native
- Two or more races

Gender:

- Male
- Female



CITY OF AURORA

Council Agenda Commentary

Item Title: Resolution Approving the Intergovernmental Agreement between the City of Aurora and Colorado Department of Transportation (CDOT) for Havana Street Transit Improvements

Item Initiator: Carlie Campuzano, Traffic Manager

Staff Source/Legal Source: Carlie Campuzano, Traffic Manager / Michelle Gardner Senior Assistant City Attorney

Outside Speaker: N/A

Council Goal: 2012: 3.2--Reduce travel time and reduce congestion and provide expanded multi-modal mobility choices

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/27/2021

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
Why is a waiver needed? [Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Transportation, Airports & Public Works

Policy Committee Date: 6/24/2021

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

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

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

On June 24, 2021 City Council approved the proposed IGA at the Transportation, Airports & Public Works Subcommittee meeting.

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

The City applied for and was awarded a federal grant through the DRCOG 2020-2023 Transportation Improvement Program Arapahoe County Subregional Forum for the Havana Street Transit Improvements Project in 2019. The City was awarded \$539,580 in federal funding and is contributing a \$117,420 local City match as well as a \$125,000 match from RTD. The City match is currently in org 49743 – Transportation Improvement Program Match. This agenda item is for the approval of an IGA with CDOT to administer the federal funding for the construction phase of the project. Another IGA between the City and RTD will be forthcoming in the next few months.

Background of the project scope is as follows:

The Havana Street corridor is served by RTD Bus Route 105 which provides important regional transit services. The route has 5200 daily boardings per RTD. It connects the Southeast Corridor Light Rail Transit services, including R, F, and H Lines, at the Southmoor Station and the East Commuter Rail, A Line, at the Central Park Station.

The Havana Corridor is one of the seven transit priority corridors identified by RTD for the following improvements:

- Improving bus travel speed and reducing bus travel time - the speed analysis for Route 105 shows that both northbound and southbound trips experience very slow operating speeds during peak hours.
- Improving bus punctuality - Punctuality has been another recurring problem. Buses typically depart up to two minutes late in the PM peaks, and can depart as much as six minutes late.
- Improving bus stop amenities and integrating stops into the adjacent land use and urban form for better accessibility and amenity - Bus stops also do not have adequate amenities to provide bus riders with a safe, convenient and comfortable environment to wait prior to boarding buses.
- Reducing bus transfer distance - There are many transfer activities between Bus Route 105 and the many east-west bus routes. Some of the transfers require a lengthy walking distance.

The implementation of this project will help to achieve a variety of Metro Vision objectives and address key TIP Focused Areas endorsed by the DRCOG Board.

The project scope will include the following:

- Bus bypass lanes
- Relocation of bus stops
- Installation of bus bulbs
- Installation of queue jump signals
- Bus stop accessibility upgrades
- Implementation of Transit Signal Priority

QUESTIONS FOR COUNCIL

Does City Council support the Resolution Approving the Intergovernmental Agreement between the City of Aurora and Colorado Department of Transportation (CDOT) for Havana Street Transit Improvements?

LEGAL COMMENTS

Governments may cooperate or contract with one another to provide any function, service, or facility lawfully authorized to each of the cooperating or contracting units only if such cooperation or contracts are authorized by each party thereto with the approval of its legislative body or other authority having the power to so approve. (Colo. Rev. Stat. §29-1-203(1)). City Council may, by resolution, enter into Intergovernmental Agreements with other governmental units or special districts for the joint use of buildings, equipment or facilities, and for furnishing or receiving commodities or services. (City Charter §10-12) (M. Gardner)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: The City has been awarded \$539,580 in federal funding and is contributing a \$117,420 local City match as well as a \$125,000 match from RTD. The local match will come from org 49743.

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain:



Transportation, Airports, and Public Works Committee

June 24, 2021

IGA with CDOT for Havana Street Transit Improvements Project

Carlie Campuzano, Traffic Manager, Public Works Engineering

Background

- Havana Corridor was identified as one of seven transit priority corridors by RTD as part of previous study effort
 - RTD Bus Route 105 provides important regional transit service with 5200 daily boardings
- Applied for funding for Transportation Improvement Program (TIP) funding through DRCOG
 - **Awarded \$539,580 federal**
 - **Committed \$117,420 (org 49743) local City of Aurora match (15%)**
 - **RTD contributing \$125,000 (16%)**
 - **Separate IGA with RTD and COA forthcoming in next few months**
 - **Grant is for construction funding only**

Background

- Project will improve bus travel time reliability and bus speeds on Havana St between Dartmouth Ave and Montview Blvd
- Scope includes:
 - Queue jumps
 - Bypass lanes for transit
 - Bus bulb outs with amenity upgrades
 - Transit signal priority at traffic signal locations



Havana St - Proposed Improvements

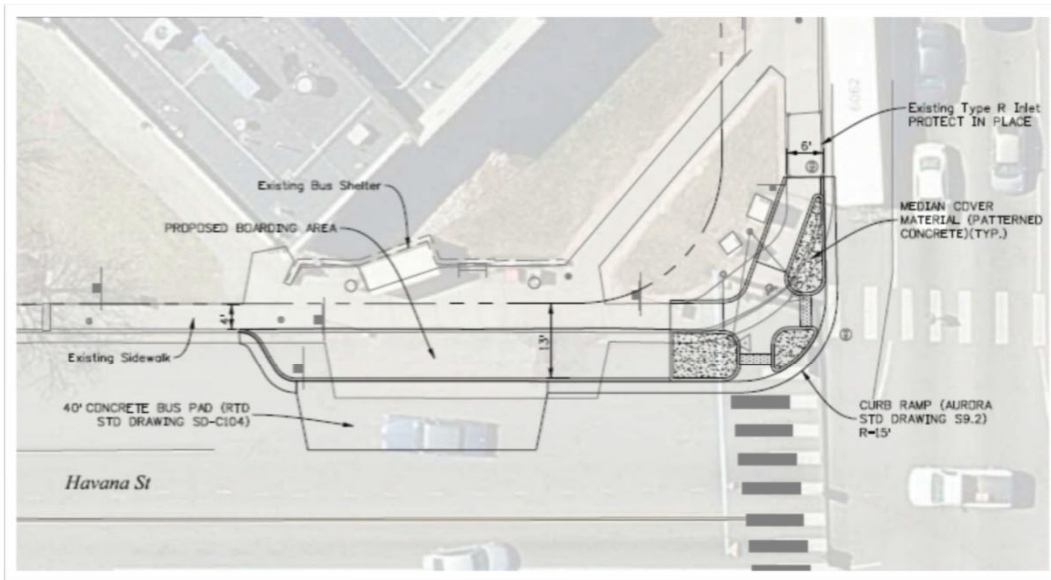
HAVANA CORRIDOR

-  QUEUE JUMP
-  PROPOSED BUS STOP
-  EXISTING BUS STOP TO BE REMOVED
-  EXISTING BUS STOP, PROPOSED AMENITY UPGRADES
-  TRANSIT SIGNAL PRIORITY (TSP)
-  BYPASS LANE
-  PROPOSED BUS BULB, WITH AMENITY UPGRADES
-  EXISTING BUS STOP, NO PROPOSED CHANGES
-  SIGNALIZED INTERSECTION (NO TSP)

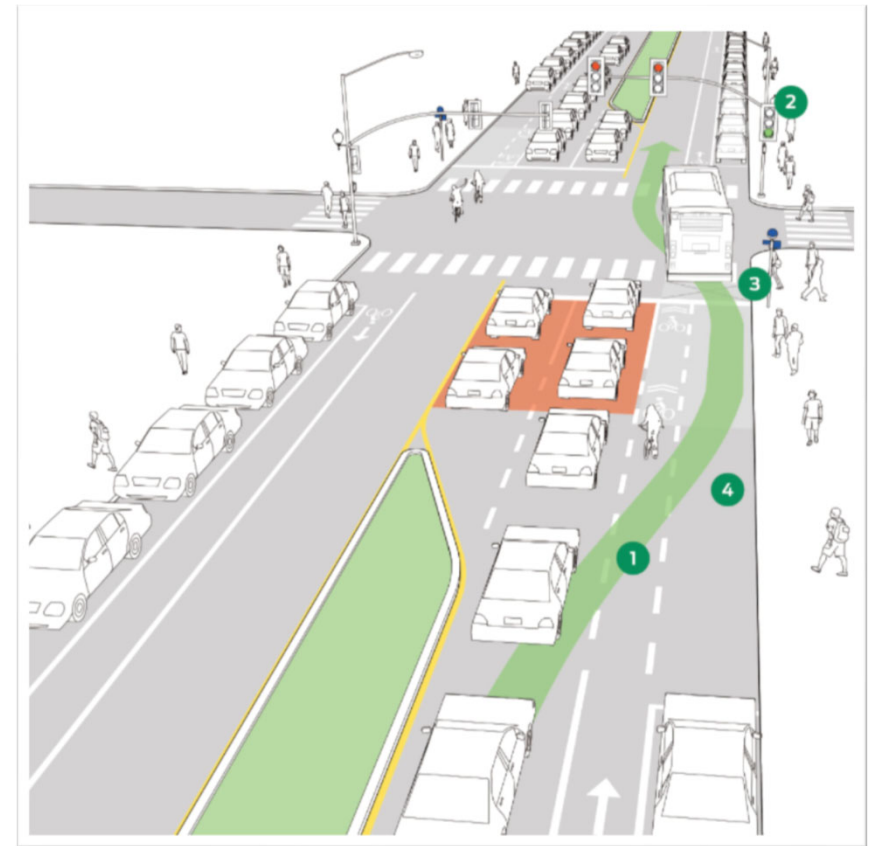


Improvement Examples

Bus Bulb Out (Havana & Colfax)



Queue Jump Example



Project Schedule

- Design: Finishing September 2021
- Construction: Fall 2021 – Summer 2022



Questions for the Committee

- Does the Committee support moving this IGA between the City and CDOT regarding funding for the Havana Street Transit Improvements Project to the next available Study Session for consideration and approval?



Transportation, Airports and Public Works (TAPS) Policy Committee Meeting

June 24, 2021

Members Present: Council Member (CM) Juan Marcano, Chair; Council Member Allison Hiltz

Others Present: Scott Bauman, Carlie Campuzano, Lynne Center, Cindy Colip, Barbara Cummins, Nancy Freed, Michelle Gardner, Haley Johansen, Matt Kozakowski, Huiliang Liu Tom McMinimee, Lainy Palmer, Julie Patterson, Tom Worker-Braddock

1. Welcome/Introduction

2. Approval of Minutes

The minutes for the May 27, 2021 TAPS meeting were approved as written

3. Consent Items (None)

4. General Business**4.a Consideration to Approve a Resolution for the IGA with CDOT for Havana Street Transit Improvements****Summary of Issue and Discussion:**

Carlie Campuzano, Traffic Manager, discussed an Intergovernmental Agreement (IGA) between the Colorado Department of Transportation (CDOT) and the City of Aurora for federal funding that the City is receiving for the Havana Street Transit Improvements Project. The Havana Street Corridor was identified as one of the seven transit priority corridors by the Regional Transportation District (RTD) during a study that was done in 2018. The City along with RTD applied for grant funding through the Transportation Improvement Program (TIP) through the Denver Regional Council of Governments (DRCOG). Through this process, the project was awarded about \$540,000 in federal funding. The City is contributing a local match of about 15% or about \$117,000 and RTD is contributing \$125,000. Ms. Campuzano will be taking a separate IGA forward later between the City and RTD for them to contribute their funding to the City. The federal funding is for construction only. We are working through the design process with a consultant that will be finishing up soon.

There are a few different scope elements that you will visibly see. Some are hard scape improvements and others are related to the signal infrastructure that will change how the timing operates but might not be immediately noticeable to the traveling public. The scope includes queue jumps at a few locations as well as bypass lanes. Where there are existing right turn lanes the bus will be able to come up to the intersection and then will jump ahead or bypass traffic. They will either have a separate bus signal head that will allow them to get out in front of the other vehicles by a few seconds when the light turns green or, if they have a far side stop, they will be able to pull into that space and let people board and then they will be able to merge into traffic. Three locations will have bus bulbs or curb extensions with some Americans With Disabilities (ADA) improvements and curb ramp upgrades. Those will only be upgraded on the corner the bus stop is on because they are meant to be bus stop amenity upgrades. These improvements will be at Colfax Avenue, 6th Avenue, 12

and Alameda Parkway.

At nine different locations we will be including transit signal priority. This infrastructure will allow the signal to give the bus a few extra seconds of green time when it arrives. This might not be immediately noticeable to drivers. Ms. Campuzano showed a map showing the locations of some of these improvements. This is directly from the study that RTD did in 2018. She then showed examples of the bus bulb out and the queue jump.

Staff is finishing the design phase of this project now. It is going through City reviews as well as CDOT reviews because of the grant funding. We anticipate that this phase will end in the next few months. Construction is slated to begin in the fall. First it will consist of the hardware testing and then you will see physical improvements during the spring and summer of 2022.

Council Member (CM) Marcano asked how the queue jumping and the bulb out are going to work together. Ms. Campuzano said that queue jumps and bus bypasses are slightly different but similar. She presented another graphic that showed the multiple phases of how these will work. For the queue jump there is a near side bus stop. The bus will stop in the right turn lane to pick up passengers. Then the bus will get the green a few seconds before the adjacent vehicles to help the bus get out in front. Now the bus pulls into the bus stop and they are essentially trapped because drivers do not allow them to merge back into traffic. This helps the bus get a few second jump to get started and move back into the flow of traffic.

With the bus bypass the bus stop is on the far side. The bypass lets the bus go straight through the right turn pocket and then pull into the far side bus stop. They are then able to merge back into traffic. This is done mostly with signing changes. This would only be activated when a bus is present as the bus would pass a virtual check in point which would activate this process. It will not be functional when buses are not present.

Outcome: The committee supports moving this item forward to the next available Study Session

Follow-up Action: This item will move forward to Study Session

5. Miscellaneous Matters

5.a. Brief Update Regarding Our Transportation Impact Fee Study

Summary of Issue and Discussion:

Cindy Colip, Director of Public Works, shared that there was a meeting held on June 23, 2021 and it was decided that the Transportation Impact Fee Study will go to Study Session in late summer or early fall of this year.

5.b. Quincy Lane

Summary of Issue and Discussion:

Council Member (CM) Hiltz said the now that the Quincy Lane project has been completed it is a little less terrifying than before. She said that before this area was a 45-degree angle, so you had to try to turn and look back at the same time which caused chaos and was terrifying. She said that she used to take Picadilly instead of dealing with the area. She thinks it is going to take a little while before people figure out that the lane is for that purpose but said that it is much easier to maneuver than the previous version. Cindy Colip, Director of Public Works, said that it will take some getting used to. She also said that Ms. Campuzano was out in the field in the evenings and at night to help Arapahoe County with the implementation of this project. Ms. Campuzano said that it went

smoother than she had anticipated. She said that it is working pretty well, and people are getting used to it. It is still a bit confusing but hopefully as people use it more and they learn to use the crossover ramp to get over to the left it will be better. CM Hiltz said that the Global Positioning System (GPS) has caught up which is good.

5.c. International Making Cities Livable Conference

Summary of Issue and Discussion:

Council Member (CM) Marcano said that he attended the International Making Cities Livable Conference in Carmel, the Roundabout Capital of the United States. He requested that staff gather information about how we use roundabout in the City and also about other places that are using roundabouts successfully. CM Marcano is interested to know how roundabouts will fit into our plan for how we will manage traffic demand as the City grows. He said that Carmel had to put some of the areas that they wanted to implement roundabouts on a road diet to make them work with the two-lane roundabouts. He said by putting heavy traffic thoroughfares on road diets and implementing the roundabouts that ten years later they have doubled the traffic volume than they did at first and it takes less time to get through those stretches of the city than it did prior to the roundabouts. They have also greatly reduced the traffic incidents in these areas. CM Marcano request that staff research where we can utilize roundabout in the City, whether it be in upcoming areas or to retrofit into some of the existing parts of the City. He said that this would probably be on the collectors and residential intersections. He would also like to see a cost differential between signalized intersections and roundabout intersections.

Nancy Freed, Deputy City Manager, said that Ms. Colip has had staff working on roundabouts for quite some time. Ms. Freed referenced the MythBusters TV series doing a show where they revealed the differences between intersections with stop signs, stop lights, and roundabouts. Ms. Colip said that we could get the recording for the presentation.

Ms. Colip said that as a part of the City's traffic control for intersections they look at traffic signals, 4-way stops and roundabouts. Of these, roundabouts are required to be reviewed by an outside consultant. She said the staff is having an interesting time communicating why the roundabout is the right solution to some of the intersections on the Anschutz Campus.

Council Member (CM) Hiltz requested the we create a marketing plan that it is a yield, not a stop sign. She also said that the roundabout in Lowry has the crosswalks to close to the exit ramp and it causes so much backup. She said that putting a crosswalk ten feet from a roundabout exit does not encourage traffic flow. Ms. Colip said the City does not do multi-lane roundabouts anymore because they are much more difficult to navigate. She said that the roundabout standards have improved greatly in the last five years. The City now uses a consulting firm to do the reviews we and have what she calls the International Expert on Roundabouts, Mark Lenters, doing an excellent job for us. CM Marcano said that while he was in Carmel, they showed them two major highway intersections that they have saved a tremendous amount of time and legal headache by putting a tear drop roundabout as a way to get onto the highway instead of using the tight diamond which is not all that tight and take a tremendous amount of land. Carmel only had to eminent domain a portion of a parking lot as opposed to fifteen buildings to make that highway improvement. He thought of the Alameda Interchange because it is so dangerous and takes up a fair amount of space. He would like the City to explore this and see if there are opportunities like on E-470 or future intersection updates where we could partner with the Colorado Department of Transportation (CDOT) to try to use a different approach as well. If we find that it is a reasonable application, he would like to explore using it in the City. Ms. Colip said that we would go through and alternatives analysis anyway because the configuration at the Alameda and I-225 Interchange is extremely unique. The

interchange that is there now is not the final and a better configuration is in another phase. She says that it makes sense to update and look at alternatives and also because the City standards require that this be done.

Victor Rachael, Deputy Director of Public Works, said that staff has included roundabouts in the alternative analysis for the Harvest interchange and the he believes that it is the preferred configuration. He said that Arapahoe County is looking at roundabouts as a potential alternative intersection treatment for interchanges they are upgrading further east.

5.d. Nancy Freed's Retirement

Summary of Issue and Discussion:

Cindy Colip, Director of Public Works, said that Nancy Freed, Deputy City Manager, is retiring and this will be her last policy committee meeting. Ms. Colip thanked Mr. Freed for everything that she has done throughout the City as well as her commitment to the City and for all of the support that she has given to the staff. Ms. Colip said the we are certainly going to miss Ms. Freed, but the she is very excited that Ms. Freed is going to enjoy her retirement. Council Member (CM) Marcano said that we are going to miss Ms. Freed dearly. Ms. Freed said that she is going to miss everyone. CM Marcano shared that Congressman Crow read a great honorary passage into the Congressional Record on June 23, 2021 for Ms. Freed. Ms. Freed said that she has shared it with others and that it was one of the nicest things that has happened to her. CM Marcano thanked Ms. Freed for all of her hard work and dedication to the City.

6. Confirm Next Meeting

The next meeting was confirmed for July 22, 2021 starting at 1:00 PM. It will be a virtual meeting.

Approved: _____

CM Juan Marcano, Committee Chair

Date

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT
Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 21-HA1-XC-00050	
Local Agency City of Aurora		Agreement Effective Date The later of the effective date or March 24, 2021	
Agreement Description Havana Street Transit Improvements		Agreement Expiration Date March 23, 2031	
Project # AQC 030A-040 (23619)	Region # 1	Contract Writer TCH	Agreement Maximum Amount \$674,475.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

<p align="center">LOCAL AGENCY City of Aurora</p> <hr/> <p align="center">Signature</p> <hr/> <p align="center">By: (Mike Coffman, Mayor)</p> <p>Date: _____</p>	<p align="center">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <hr/> <p align="center">Stephen Harelson, P.E., Chief Engineer</p> <p>Date: _____</p>
<p align="center">Additional Local Agency Signatures</p> <p>Attest: _____ Kadee Rodriguez, City Clerk</p> <p>Date: _____</p> <p>Approved as to Form: <i>Michelle Gardner</i> Michelle Gardner, Sr. Assistant City Attorney Date: 8/4/2021</p>	<p align="center">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <hr/> <p align="center">Assistant Attorney General</p> <hr/> <p align="center">By: (Print Name and Title)</p> <p>Date: _____</p>
<p align="center">In accordance with §24-30-202 C.R.S., this Agreement is not valid until signed and dated below by the State Controller or an authorized delegate.</p> <p align="center">STATE CONTROLLER Robert Jaros, CPA, MBA, JD</p> <p align="center">By: _____ Department of Transportation</p> <p align="center">Effective Date: _____</p>	

TABLE OF CONTENTS

1. PARTIES2
 2. TERM AND EFFECTIVE DATE2
 3. AUTHORITY3
 4. PURPOSE.....4
 5. DEFINITIONS4
 6. STATEMENT OF WORK6
 7. PAYMENTS.....9
 8. REPORTING - NOTIFICATION14
 9. LOCAL AGENCY RECORDS14
 10. CONFIDENTIAL INFORMATION-STATE RECORDS15
 11. CONFLICTS OF INTEREST.....16
 12. INSURANCE16
 13. BREACH.....18
 14. REMEDIES18
 15. DISPUTE RESOLUTION19
 16. NOTICES AND REPRESENTATIVES20
 17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION20
 18. GOVERNMENTAL IMMUNITY21
 19. STATEWIDE CONTRACT MANAGEMENT SYSTEM.....21
 20. GENERAL PROVISIONS21
 21. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)23
 22. FEDERAL REQUIREMENTS25
 23. DISADVANTAGED BUSINESS ENTERPRISE (DBE).....25
 24. DISPUTES25

- EXHIBIT A, STATEMENT OF WORK
- EXHIBIT B, SAMPLE OPTION LETTER
- EXHIBIT C, FUNDING PROVISIONS
- EXHIBIT D, LOCAL AGENCY RESOLUTION
- EXHIBIT E, LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST
- EXHIBIT F, CERTIFICATION FOR FEDERAL-AID AGREEMENTS
- EXHIBIT G, DISADVANTAGED BUSINESS ENTERPRISE
- EXHIBIT H, LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES
- EXHIBIT I, FEDERAL-AID AGREEMENT PROVISIONS FOR CONSTRUCTION AGREEMENTS
- EXHIBIT J, ADDITIONAL FEDERAL REQUIREMENTS
- EXHIBIT K, FFATA SUPPLEMENTAL FEDERAL PROVISIONS
- EXHIBIT L, SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT FORM
- EXHIBIT M, OMB UNIFORM GUIDANCE FOR FEDERAL AWARDS

1. PARTIES

This Agreement is entered into by and between Local Agency named on the Signature and Cover Page for this Agreement (“Local Agency”), and the STATE OF COLORADO acting by and through the State agency named on the Signature and Cover Page for this Agreement (the “State” or “CDOT”). Local Agency and the State agree to the terms and conditions in this Agreement.

2. TERM AND EFFECTIVE DATE

A. Effective Date

This Agreement shall not be valid or enforceable until the Effective Date, and Agreement Funds shall be expended within the dates shown in **Exhibit C** for each respective phase (“Phase Performance Period(s)”). The State shall not be bound by any provision of this Agreement before the Effective Date, and shall have no obligation to pay Local Agency for any Work performed or expense incurred before 1) the Effective Date of this original Agreement; 2) before the encumbering document for the respective phase *and* the official

Notice to Proceed for the respective phase; or 3) after the Final Phase Performance End Date, as shown in **Exhibit C**. Additionally, the State shall have no obligation to pay Local Agency for any Work performed or expense incurred after the Agreement Expiration Date or after required billing deadline specified in **§7.B.i.e.**, the expiration of Multimodal Transportation Options Funding (“MMOF”) if applicable, whichever is sooner. The State’s obligation to pay Agreement Funds exclusive of MMOF will continue until the Agreement Expiration Date. If Agreement Funds expire before the Agreement Expiration Date, then no payments will be made after expiration of Agreement Funds.

B. Initial Term

The Parties’ respective performances under this Agreement shall commence on the Agreement Effective Date shown on the Signature and Cover Page for this Agreement and shall terminate on March 23, 2031 as shown on the Signature and Cover Page for this Agreement, unless sooner terminated or further extended in accordance with the terms of this Agreement.

C. Early Termination in the Public Interest

The State is entering into this Agreement to serve the public interest of the State of Colorado as determined by its Governor, General Assembly, or Courts. If this Agreement ceases to further the public interest of the State, the State, in its discretion, may terminate this Agreement in whole or in part. This subsection shall not apply to a termination of this Agreement by the State for breach by Local Agency, which shall be governed by **§14.A.i**.

i. Method and Content

The State shall notify Local Agency of such termination in accordance with **§16**. The notice shall specify the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice for termination in the public interest, Local Agency shall be subject to **§14.A.i.a**

iii. Payments

If the State terminates this Agreement in the public interest, the State shall pay Local Agency an amount equal to the percentage of the total reimbursement payable under this Agreement that corresponds to the percentage of Work satisfactorily completed and accepted, as determined by the State, less payments previously made. Additionally, if this Agreement is less than 60% completed, as determined by the State, the State may reimburse Local Agency for a portion of actual out-of-pocket expenses, not otherwise reimbursed under this Agreement, incurred by Local Agency which are directly attributable to the uncompleted portion of Local Agency’s obligations, provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to Local Agency hereunder.

3. AUTHORITY

Authority to enter into this Agreement exists in the law as follows:

A. Federal Authority

Pursuant to Title I, Subtitle A, of the “Fixing America’s Surface Transportation Act” (FAST Act) of 2015, and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the “Federal Provisions”), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration (“FHWA”).

B. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-

101(4)(c) and 43-2-104.5.

4. PURPOSE

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

5. DEFINITIONS

The following terms shall be construed and interpreted as follows:

- A. **"Agreement"** means this agreement, including all attached Exhibits, all documents incorporated by reference, all referenced statutes, rules and cited authorities, and any future modifications thereto.
- B. **"Agreement Funds"** means the funds that have been appropriated, designated, encumbered, or otherwise made available for payment by the State under this Agreement.
- C. **"Award"** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise.
- D. **"Budget"** means the budget for the Work described in **Exhibit C**.
- E. **"Business Day"** means any day in which the State is open and conducting business, but shall not include Saturday, Sunday or any day on which the State observes one of the holidays listed in §24-11-101(1) C.R.S.
- F. **"Consultant"** means a professional engineer or designer hired by Local Agency to design the Work Product.
- G. **"Contractor"** means the general construction contractor hired by Local Agency to construct the Work.
- H. **"CORA"** means the Colorado Open Records Act, §§24-72-200.1 *et. seq.*, C.R.S.
- I. **"Effective Date"** means the date on which this Agreement is approved and signed by the Colorado State Controller or designee, as shown on the Signature and Cover Page for this Agreement.
- J. **"Evaluation"** means the process of examining Local Agency's Work and rating it based on criteria established in §6, **Exhibit A** and **Exhibit E**.
- K. **"Exhibits"** means the following exhibits attached to this Agreement:
 - i. **Exhibit A**, Statement of Work.
 - ii. **Exhibit B**, Sample Option Letter.
 - iii. **Exhibit C**, Funding Provisions
 - iv. **Exhibit D**, Local Agency Resolution
 - v. **Exhibit E**, Local Agency Contract Administration Checklist
 - vi. **Exhibit F**, Certification for Federal-Aid Contracts
 - vii. **Exhibit G**, Disadvantaged Business Enterprise
 - viii. **Exhibit H**, Local Agency Procedures for Consultant Services
 - ix. **Exhibit I**, Federal-Aid Contract Provisions for Construction Contracts
 - x. **Exhibit J**, Additional Federal Requirements
 - xi. **Exhibit K**, The Federal Funding Accountability and Transparency Act of 2006 (FFATA) Supplemental Federal Provisions
 - xii. **Exhibit L**, Sample Sub-Recipient Monitoring and Risk Assessment Form
 - xiii. **Exhibit M**, Supplemental Provisions for Federal Awards Subject to The Office of Management and Budget Uniform Administrative Requirements, Cost principles, and Audit Requirements for Federal Awards (the "Uniform Guidance")
- L. **"Federal Award"** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. "Federal Award" also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
- M. **"Federal Awarding Agency"** means a Federal agency providing a Federal Award to a Recipient.

- N. **“FHWA”** means the Federal Highway Administration, which is one of the twelve administrations under the Office of the Secretary of Transportation at the U.S. Department of Transportation. FHWA provides stewardship over the construction, maintenance and preservation of the Nation’s highways and tunnels. FHWA is the Federal Awarding Agency for the Federal Award which is the subject of this Agreement.
- O. **“Goods”** means any movable material acquired, produced, or delivered by Local Agency as set forth in this Agreement and shall include any movable material acquired, produced, or delivered by Local Agency in connection with the Services.
- P. **“Incident”** means any accidental or deliberate event that results in or constitutes an imminent threat of the unauthorized access or disclosure of State Confidential Information or of the unauthorized modification, disruption, or destruction of any State Records.
- Q. **“Initial Term”** means the time period defined in **§2.B**
- R. **“Multimodal Transportation Options Funding”** or **“MMOF”** means money transferred from the general fund to the fund pursuant to C.R.S. §§24-75-219 (5)(a)(III) and (5)(b)(III) and any other money that the general assembly may appropriate or transfer to the fund.
- S. **“Notice to Proceed”** means the letter issued by the State to the Local Agency stating the date the Local Agency can begin work subject to the conditions of this Agreement.
- T. **“OMB”** means the Executive Office of the President, Office of Management and Budget.
- U. **“Oversight”** means the term as it is defined in the Stewardship Agreement between CDOT and the FHWA.
- V. **“Party”** means the State or Local Agency, and **“Parties”** means both the State and Local Agency.
- W. **“PII”** means personally identifiable information including, without limitation, any information maintained by the State about an individual that can be used to distinguish or trace an individual’s identity, such as name, social security number, date and place of birth, mother’s maiden name, or biometric records; and any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information. PII includes, but is not limited to, all information defined as personally identifiable information in §24-72-501 C.R.S.
- X. **“Recipient”** means the Colorado Department of Transportation (CDOT) for this Federal Award.
- Y. **“Services”** means the services to be performed by Local Agency as set forth in this Agreement, and shall include any services to be rendered by Local Agency in connection with the Goods.
- Z. **“State Confidential Information”** means any and all State Records not subject to disclosure under CORA. State Confidential Information shall include, but is not limited to, PII and State personnel records not subject to disclosure under CORA.
- AA. **“State Fiscal Rules”** means the fiscal rules promulgated by the Colorado State Controller pursuant to §24-30-202(13)(a).
- BB. **“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.
- CC. **“State Purchasing Director”** means the position described in the Colorado Procurement Code and its implementing regulations.
- DD. **“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.
- EE. **“Subcontractor”** means third-parties, if any, engaged by Local Agency to aid in performance of the Work.
- FF. **“Subrecipient”** means a non-Federal entity that receives a sub-award from a Recipient to carry out part of a Federal program, but does not include an individual that is a beneficiary of such program. A Subrecipient may also be a recipient of other Federal Awards directly from a Federal Awarding Agency.
- GG. **“Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB

Circulars A-21, A-87, A-110, A-122, A-89, A-102, and A-133, and the guidance in Circular A-50 on Single Audit Act follow-up.

HH. “**Work**” means the delivery of the Goods and performance of the Services in compliance with CDOT’s Local Agency Manual described in this Agreement.

II. “**Work Product**” means the tangible and intangible results of the Work, whether finished or unfinished, including drafts. Work Product includes, but is not limited to, documents, text, software (including source code), research, reports, proposals, specifications, plans, notes, studies, data, images, photographs, negatives, pictures, drawings, designs, models, surveys, maps, materials, ideas, concepts, know-how, and any other results of the Work. “Work Product” does not include any material that was developed prior to the Effective Date that is used, without modification, in the performance of the Work.

Any other term used in this Agreement that is defined in an Exhibit shall be construed and interpreted as defined in that Exhibit.

6. STATEMENT OF WORK

Local Agency shall complete the Work as described in this Agreement and in accordance with the provisions of **Exhibit A**, and the Local Agency Manual. The State shall have no liability to compensate Local Agency for the delivery of any Goods or the performance of any Services that are not specifically set forth in this Agreement.

Work may be divided into multiple phases that have separate periods of performance. The State may not compensate for Work that Local Agency performs outside of its designated phase performance period. The performance period of phases, including, but not limited to Design, Construction, Right of Way, Utilities, or Environment phases, are identified in **Exhibit C**. The State may unilaterally modify **Exhibit C** from time to time, at its sole discretion, to extend the period of performance for a phase of Work authorized under this Agreement. To exercise this phase performance period extension option, the State will provide written notice to Local Agency in a form substantially equivalent to **Exhibit B**. The State’s unilateral extension of phase performance periods will not amend or alter in any way the funding provisions or any other terms specified in this Agreement, notwithstanding the options listed under **§7.E**

A. Local Agency Commitments

i. Design

If the Work includes preliminary design, final design, design work sheets, or special provisions and estimates (collectively referred to as the “Plans”), Local Agency shall ensure that it and its Contractors comply with and are responsible for satisfying the following requirements:

- a. Perform or provide the Plans to the extent required by the nature of the Work.
- b. Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c. Prepare provisions and estimates in accordance with the most current version of the State’s Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d. Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e. Stamp the Plans as produced by a Colorado registered professional engineer.
- f. Provide final assembly of Plans and all other necessary documents.
- g. Ensure the Plans are accurate and complete.
- h. Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT, and when final, they will be deemed incorporated herein.

ii. Local Agency Work

- a. Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA) 42 U.S.C. § 12101, et. seq., and applicable federal regulations and standards as contained in the document “ADA Accessibility Requirements in CDOT Transportation Projects”.
 - b. Local Agency shall afford the State ample opportunity to review the Plans and shall make any changes in the Plans that are directed by the State to comply with FHWA requirements.
 - c. Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**. If Local Agency enters into a contract with a Consultant for the Work:
 - 1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State’s approval. If not approved by the State, Local Agency shall not enter into such Consultant contract.
 - 2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
 - 3) Local Agency shall require that all billings under the Consultant contract comply with the State’s standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.
 - 4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.
 - 5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from Local Agency’s attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).
 - 6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:
 - (a) The design work under this Agreement shall be compatible with the requirements of the contract between Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.
 - (b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.
 - (c) The consultant shall review the construction Contractor’s shop drawings for conformance with the contract documents and compliance with the provisions of the State’s publication, Standard Specifications for Road and Bridge Construction, in connection with this work.
 - (d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.
- iii. Construction

If the Work includes construction, Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for

contract modification orders and minor contract revisions; processing construction Contractor claims; construction supervision; and meeting the quality control requirements of the FHWA/CDOT Stewardship Agreement, as described in **Exhibit E**.

- a. The State may, after providing written notice of the reason for the suspension to Local Agency, suspend the Work, wholly or in part, due to the failure of Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.
- b. Local Agency shall be responsible for the following:
 - 1) Appointing a qualified professional engineer, licensed in the State of Colorado, as Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures, as defined in the CDOT Local Agency Manual (https://www.codot.gov/business/designsupport/bulletins_manuals/2006-local-agency-manual).
 - 2) For the construction Services, advertising the call for bids, following its approval by the State, and awarding the construction contract(s) to the lowest responsible bidder(s).
 - (a) All Local Agency's advertising and bid awards pursuant to this Agreement shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that Local Agency and its Contractor(s) incorporate Form 1273 (Exhibit I) in its entirety, verbatim, into any subcontract(s) for Services as terms and conditions thereof, as required by 23 C.F.R. 633.102(e).
 - (b) Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. Local Agency must accept or reject such bids within 3 working days after they are publicly opened.
 - (c) If Local Agency accepts bids and makes awards that exceed the amount of available Agreement Funds, Local Agency shall provide the additional funds necessary to complete the Work or not award such bids.
 - (d) The requirements of §6.A.iii.b.2 also apply to any advertising and bid awards made by the State.
 - (e) The State (and in some cases FHWA) must approve in advance all Force Account Construction, and Local Agency shall not initiate any such Services until the State issues a written Notice to Proceed.
- iv. Right of Way (ROW) and Acquisition/Relocation
 - a. If Local Agency purchases a ROW for a State highway, including areas of influence, Local Agency shall convey the ROW to CDOT promptly upon the completion of the project/construction.
 - b. Any acquisition/relocation activities shall comply with all applicable federal and State statutes and regulations, including but not limited to, the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs, as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.
 - c. The Parties' respective responsibilities for ensuring compliance with acquisition, relocation and incidentals depend on the level of federal participation as detailed in CDOT's Right of Way Manual (located at <http://www.codot.gov/business/manuals/right-of-way>); however, the State always retains oversight responsibilities.
 - d. The Parties' respective responsibilities at each level of federal participation in CDOT's Right of Way Manual, and the State's reimbursement of Local Agency costs will be determined pursuant to the following categories:

- 1) Right of way acquisition (3111) for federal participation and non-participation;
- 2) Relocation activities, if applicable (3109);
- 3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

v. Utilities

If necessary, Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company that may become involved in the Work. Prior to the Work being advertised for bids, Local Agency shall certify in writing to the State that all such clearances have been obtained.

vi. Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, Local Agency shall make timely application to the Public Utilities Commission ("PUC") requesting its order providing for the installation of the proposed improvements. Local Agency shall not proceed with that part of the Work before obtaining the PUC's order. Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities, and:

- a. Execute an agreement with the railroad company setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.
- b. Obtain the railroad's detailed estimate of the cost of the Work.
- c. Establish future maintenance responsibilities for the proposed installation.
- d. Proscribe in the agreement the future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.
- e. Establish future repair and/or replacement responsibilities, as between the railroad company and the Local Agency, in the event of accidental destruction or damage to the installation.

vii. Environmental Obligations

Local Agency shall perform all Work in accordance with the requirements of current federal and State environmental regulations, including the National Environmental Policy Act of 1969 (NEPA) as applicable.

viii. Maintenance Obligations

Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA. Local Agency shall conduct such maintenance and operations in accordance with all applicable statutes, ordinances, and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

ix. Monitoring Obligations

Local Agency shall respond in a timely manner to and participate fully with the monitoring activities described in **§7.F.vi**.

B. State's Commitments

- i. The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- ii. Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any Work constituting major structures designed by, or that are the responsibility of, Local Agency, as identified in **Exhibit E**.

7. PAYMENTS

A. Maximum Amount

Payments to Local Agency are limited to the unpaid, obligated balance of the Agreement Funds set forth in **Exhibit C**. The State shall not pay Local Agency any amount under this Agreement that exceeds the Agreement Maximum set forth in **Exhibit C**.

B. Payment Procedures

i. Invoices and Payment

- a. The State shall pay Local Agency in the amounts and in accordance with conditions set forth in **Exhibit C**.
- b. Local Agency shall initiate payment requests by invoice to the State, in a form and manner approved by the State.
- c. The State shall pay each invoice within 45 days following the State's receipt of that invoice, so long as the amount invoiced correctly represents Work completed by Local Agency and previously accepted by the State during the term that the invoice covers. If the State determines that the amount of any invoice is not correct, then Local Agency shall make all changes necessary to correct that invoice.
- d. The acceptance of an invoice shall not constitute acceptance of any Work performed or deliverables provided under the Agreement.
- e. If a project is funded in part by the State with MMOF there is an expiration date for the funds. The expiration date applies to grants and local funds used to match grants. In order to receive payment from the State or credit for the match, Work must be completed prior to the expiration date of funding and invoiced in compliance with C.R.S. §§24-75-102(a) and 24-30-202(11). Billing for this work must be submitted 30 days prior to the end of the State Fiscal Year which is June 30th.

ii. Interest

Amounts not paid by the State within 45 days after the State's acceptance of the invoice shall bear interest on the unpaid balance beginning on the 46th day at the rate of 1% per month, as required by §24-30-202(24)(a), C.R.S., until paid in full; provided, however, that interest shall not accrue on unpaid amounts that the State disputes in writing. Local Agency shall invoice the State separately for accrued interest on delinquent amounts, and the invoice shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Payment Disputes

If Local Agency disputes any calculation, determination, or amount of any payment, Local Agency shall notify the State in writing of its dispute within 30 days following the earlier to occur of Local Agency's receipt of the payment or notification of the determination or calculation of the payment by the State. The State will review the information presented by Local Agency and may make changes to its determination based on this review. The calculation, determination, or payment amount that results from the State's review shall not be subject to additional dispute under this subsection. No payment subject to a dispute under this subsection shall be due until after the State has concluded its review, and the State shall not pay any interest on any amount during the period it is subject to dispute under this subsection.

iv. Available Funds-Contingency-Termination

- a. The State is prohibited by law from making commitments beyond the term of the current State Fiscal Year. Payment to Local Agency beyond the current State Fiscal Year is contingent on the appropriation and continuing availability of Agreement Funds in any subsequent year (as provided in the Colorado Special Provisions). If federal funds or funds from any other non-State funds constitute all or some of the Agreement Funds, the State's obligation to pay Local Agency shall be contingent upon such non-State funding continuing to be made available for payment. Payments to be made pursuant to this Agreement shall be made only from Agreement Funds, and the State's liability for such payments shall be limited to the amount remaining of such Agreement Funds. If State, federal or other funds are not appropriated, or otherwise become unavailable to fund this Agreement, the State may, upon written notice, terminate this Agreement, in whole or in part, without incurring further liability. The State shall, however, remain obligated to pay for Services and Goods that are delivered and accepted prior to the effective date of notice of termination, and

this termination shall otherwise be treated as if this Agreement were terminated in the public interest as described in **§2.C**.

- b. If the agreement funds are terminated, the State can terminate the contract early. Payment due for work done to the date of termination will be processed in a manner consistent with **§2.C**.

v. Erroneous Payments

The State may recover, at the State's discretion, payments made to Local Agency in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Local Agency. The State may recover such payments by deduction from subsequent payments under this Agreement, deduction from any payment due under any other contracts, grants or agreements between the State and Local Agency, or by any other appropriate method for collecting debts owed to the State. The close out of a Federal Award does not affect the right of FHWA or the State to disallow costs and recover funds on the basis of a later audit or other review. Any cost disallowance recovery is to be made within the Record Retention Period (as defined below in **§9.A.**).

C. Matching Funds

Local Agency shall provide matching funds as provided in **§7.A.** and **Exhibit C**. Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of Local Agency and paid into Local Agency's treasury. Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. Local Agency may evidence such obligation by an appropriate ordinance/resolution or other authority letter expressly authorizing Local Agency to enter into this Agreement and to expend its match share of the Work. A copy of any such ordinance/resolution or authority letter is attached hereto as **Exhibit D**. Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of Local Agency. Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes, or penalties of any nature, except as required by Local Agency's laws or policies.

D. Reimbursement of Local Agency Costs

The State shall reimburse Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§7**. The applicable principles described in 2 C.F.R. Part 200 shall govern the State's obligation to reimburse all costs incurred by Local Agency and submitted to the State for reimbursement hereunder, and Local Agency shall comply with all such principles. The State shall reimburse Local Agency for the federal-aid share of properly documented costs related to the Work after review and approval thereof, subject to the provisions of this Agreement and **Exhibit C**. Local Agency costs for Work performed prior to the Effective Date shall not be reimbursed absent specific allowance of pre-award costs and indication that the Federal Award funding is retroactive. Local Agency costs for Work performed after any Performance Period End Date for a respective phase of the Work, is not reimbursable. Allowable costs shall be:

- i. Reasonable and necessary to accomplish the Work and for the Goods and Services provided.
- ii. Actual net cost to Local Agency (i.e. the price paid minus any items of value received by Local Agency that reduce the cost actually incurred).

E. Unilateral Modification of Agreement Funds Budget by State Option Letter

The State may, at its discretion, issue an "Option Letter" to Local Agency to add or modify Work phases in the Work schedule in **Exhibit C** if such modifications do not increase total budgeted Agreement Funds. Such Option Letters shall amend and update **Exhibit C**, Sections 2 or 4 of the Table, and sub-sections B and C of the **Exhibit C**. Option Letters shall not be deemed valid until signed by the State Controller or an authorized delegate. Modification of **Exhibit C** by unilateral Option Letter is permitted only in the specific scenarios listed below. The State will exercise such options by providing Local Agency a fully executed Option Letter, in a form substantially equivalent to **Exhibit B**. Such Option Letters will be incorporated into this Agreement.

i. Option to Begin a Phase and/or Increase or Decrease the Encumbrance Amount

The State may require by Option Letter that Local Agency begin a new Work phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous Work (but may not include Right of Way Acquisition/Relocation or Railroads) as detailed in **Exhibit A**. Such Option Letters may not modify the other terms and conditions stated in this Agreement, and must decrease the amount budgeted and encumbered for one or more other Work phases so that the total amount of budgeted Agreement Funds remains the same. The State may also issue a unilateral Option Letter to simultaneously increase and decrease the total encumbrance amount of two or more existing Work phases, as long as the total amount of budgeted Agreement Funds remains the same, replacing the original Agreement Funding exhibit (**Exhibit C**) with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3, etc.**).

ii. Option to Transfer Funds from One Phase to Another Phase.

The State may require or permit Local Agency to transfer Agreement Funds from one Work phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another phase as a result of changes to State, federal, and local match funding. In such case, the original funding exhibit (**Exhibit C**) will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3, etc.**) attached to the Option Letter. The Agreement Funds transferred from one Work phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within thirty (30) days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iii. Option to Exercise Options i and ii.

The State may require Local Agency to add a Work phase as detailed in **Exhibit A**, and encumber and transfer Agreement Funds from one Work phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (with subsequent exhibits labeled **C-2, C-3, etc.**) attached to the Option Letter. The addition of a Work phase and encumbrance and transfer of Agreement Funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted Agreement Funds remaining the same. The State may unilaterally exercise this option by providing a fully executed Option Letter to Local Agency within 30 days before the initial targeted start date of the Work phase, in a form substantially equivalent to **Exhibit B**.

iv. Option to Update a Work Phase Performance Period and/or modify information required under the OMB Uniform Guidance, as outlined in **Exhibit C**. The State may update any information contained in **Exhibit C**, Sections 2 and 4 of the Table, and sub-sections B and C of the **Exhibit C**.

F. Accounting

Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

i. Local Agency Performing the Work

If Local Agency is performing the Work, it shall document all allowable costs, including any approved Services contributed by Local Agency or subcontractors, using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

ii. Local Agency-Checks or Draws

Checks issued or draws made by Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. Local Agency shall keep on file all checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents in the office of Local Agency, clearly identified, readily accessible, and to the extent feasible, separate and apart from all other Work documents.

iii. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. Local Agency shall reimburse the State for the costs of any such services from the budgeted Agreement Funds as

provided for in **Exhibit C**. If FHWA Agreement Funds are or become unavailable, or if Local Agency terminates this Agreement prior to the Work being approved by the State or otherwise completed, then all actual incurred costs of such services and assistance provided by the State shall be reimbursed to the State by Local Agency at its sole expense.

iv. Local Agency-Invoices

Local Agency's invoices shall describe in detail the reimbursable costs incurred by Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and Local Agency shall not submit more than one invoice per month.

v. Invoicing Within 60 Days

The State shall not be liable to reimburse Local Agency for any costs invoiced more than 60 days after the date on which the costs were incurred, including costs included in Local Agency's final invoice. The State may withhold final payment to Local Agency at the State's sole discretion until completion of final audit. Any costs incurred by Local Agency that are not allowable under 2 C.F.R. Part 200 shall be Local Agency's responsibility, and the State will deduct such disallowed costs from any payments due to Local Agency. The State will not reimburse costs for Work performed after the Performance Period End Date for a respective Work phase. The State will not reimburse costs for Work performed prior to Performance Period End Date, but for which an invoice is received more than 60 days after the Performance Period End Date.

vi. Risk Assessment & Monitoring

Pursuant to 2 C.F.R. 200.331(b), – CDOT will evaluate Local Agency's risk of noncompliance with federal statutes, regulations, and terms and conditions of this Agreement. Local Agency shall complete a Risk Assessment Form (**Exhibit L**) when that may be requested by CDOT. The risk assessment is a quantitative and/or qualitative determination of the potential for Local Agency's non-compliance with the requirements of the Federal Award. The risk assessment will evaluate some or all of the following factors:

- Experience: Factors associated with the experience and history of the Subrecipient with the same or similar Federal Awards or grants.
- Monitoring/Audit: Factors associated with the results of the Subrecipient's previous audits or monitoring visits, including those performed by the Federal Awarding Agency, when the Subrecipient also receives direct federal funding. Include audit results if Subrecipient receives single audit, where the specific award being assessed was selected as a major program.
- Operation: Factors associated with the significant aspects of the Subrecipient's operations, in which failure could impact the Subrecipient's ability to perform and account for the contracted goods or services.
- Financial: Factors associated with the Subrecipient's financial stability and ability to comply with financial requirements of the Federal Award.
- Internal Controls: Factors associated with safeguarding assets and resources, deterring and detecting errors, fraud and theft, ensuring accuracy and completeness of accounting data, producing reliable and timely financial and management information, and ensuring adherence to its policies and plans.
- Impact: Factors associated with the potential impact of a Subrecipient's non-compliance to the overall success of the program objectives.
- Program Management: Factors associated with processes to manage critical personnel, approved written procedures, and knowledge of rules and regulations regarding federal-aid projects.

Following Local Agency's completion of the Risk Assessment Tool (**Exhibit L**), CDOT will determine the level of monitoring it will apply to Local Agency's performance of the Work. This risk assessment may be re-evaluated after CDOT begins performing monitoring activities.

G. Close Out

Local Agency shall close out this Award within 90 days after the Final Phase Performance End Date. Close out requires Local Agency's submission to the State of all deliverables defined in this Agreement, and Local Agency's final reimbursement request or invoice. The State will withhold 5% of allowable costs until all final documentation has been submitted and accepted by the State as substantially complete. If FHWA has not closed this Federal Award within 1 year and 90 days after the Final Phase Performance End Date due to Local Agency's failure to submit required documentation, then Local Agency may be prohibited from applying for new Federal Awards through the State until such documentation is submitted and accepted.

8. REPORTING - NOTIFICATION

A. Quarterly Reports

In addition to any reports required pursuant to §19 or pursuant to any exhibit, for any contract having a term longer than 3 months, Local Agency shall submit, on a quarterly basis, a written report specifying progress made for each specified performance measure and standard in this Agreement. Such progress report shall be in accordance with the procedures developed and prescribed by the State. Progress reports shall be submitted to the State not later than five (5) Business Days following the end of each calendar quarter or at such time as otherwise specified by the State.

B. Litigation Reporting

If Local Agency is served with a pleading or other document in connection with an action before a court or other administrative decision making body, and such pleading or document relates to this Agreement or may affect Local Agency's ability to perform its obligations under this Agreement, Local Agency shall, within 10 days after being served, notify the State of such action and deliver copies of such pleading or document to the State's principal representative identified in §16.

C. Performance and Final Status

Local Agency shall submit all financial, performance and other reports to the State no later than 60 calendar days after the Final Phase Performance End Date or sooner termination of this Agreement, containing an Evaluation of Subrecipient's performance and the final status of Subrecipient's obligations hereunder.

D. Violations Reporting

Local Agency must disclose, in a timely manner, in writing to the State and FHWA, all violations of federal or State criminal law involving fraud, bribery, or gratuity violations potentially affecting the Federal Award. Penalties for noncompliance may include suspension or debarment (2 CFR Part 180 and 31 U.S.C. 3321).

9. LOCAL AGENCY RECORDS

A. Maintenance

Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. Local Agency shall maintain such records for a period (the "Record Retention Period") of three years following the date of submission to the State of the final expenditure report, or if this Award is renewed quarterly or annually, from the date of the submission of each quarterly or annual report, respectively. If any litigation, claim, or audit related to this Award starts before expiration of the Record Retention Period, the Record Retention Period shall extend until all litigation, claims, or audit findings have been resolved and final action taken by the State or Federal Awarding Agency. The Federal Awarding Agency, a cognizant agency for audit, oversight or indirect costs, and the State, may notify Local Agency in writing that the Record Retention Period shall be extended. For records for real property and equipment, the Record Retention Period shall extend three years following final disposition of such property.

B. Inspection

Local Agency shall permit the State to audit, inspect, examine, excerpt, copy, and transcribe Local Agency Records during the Record Retention Period. Local Agency shall make Local Agency Records available during normal business hours at Local Agency's office or place of business, or at other mutually agreed upon

times or locations, upon no fewer than 2 Business Days' notice from the State, unless the State determines that a shorter period of notice, or no notice, is necessary to protect the interests of the State.

C. Monitoring

The State will monitor Local Agency's performance of its obligations under this Agreement using procedures as determined by the State. The State shall monitor Local Agency's performance in a manner that does not unduly interfere with Local Agency's performance of the Work.

D. Final Audit Report

Local Agency shall promptly submit to the State a copy of any final audit report of an audit performed on Local Agency's records that relates to or affects this Agreement or the Work, whether the audit is conducted by Local Agency or a third party.

10. CONFIDENTIAL INFORMATION-STATE RECORDS

A. Confidentiality

Local Agency shall hold and maintain, and cause all Subcontractors to hold and maintain, any and all State Records that the State provides or makes available to Local Agency for the sole and exclusive benefit of the State, unless those State Records are otherwise publicly available at the time of disclosure or are subject to disclosure by Local Agency under CORA. Local Agency shall not, without prior written approval of the State, use for Local Agency's own benefit, publish, copy, or otherwise disclose to any third party, or permit the use by any third party for its benefit or to the detriment of the State, any State Records, except as otherwise stated in this Agreement. Local Agency shall provide for the security of all State Confidential Information in accordance with all policies promulgated by the Colorado Office of Information Security and all applicable laws, rules, policies, publications, and guidelines. Local Agency shall immediately forward any request or demand for State Records to the State's principal representative.

B. Other Entity Access and Nondisclosure Agreements

Local Agency may provide State Records to its agents, employees, assigns and Subcontractors as necessary to perform the Work, but shall restrict access to State Confidential Information to those agents, employees, assigns and Subcontractors who require access to perform their obligations under this Agreement. Local Agency shall ensure all such agents, employees, assigns, and Subcontractors sign nondisclosure agreements with provisions at least as protective as those in this Agreement, and that the nondisclosure agreements are in force at all times the agent, employee, assign or Subcontractor has access to any State Confidential Information. Local Agency shall provide copies of those signed nondisclosure agreements to the State upon request.

C. Use, Security, and Retention

Local Agency shall use, hold and maintain State Confidential Information in compliance with any and all applicable laws and regulations in facilities located within the United States, and shall maintain a secure environment that ensures confidentiality of all State Confidential Information wherever located. Local Agency shall provide the State with access, subject to Local Agency's reasonable security requirements, for purposes of inspecting and monitoring access and use of State Confidential Information and evaluating security control effectiveness. Upon the expiration or termination of this Agreement, Local Agency shall return State Records provided to Local Agency or destroy such State Records and certify to the State that it has done so, as directed by the State. If Local Agency is prevented by law or regulation from returning or destroying State Confidential Information, Local Agency warrants it will guarantee the confidentiality of, and cease to use, such State Confidential Information.

D. Incident Notice and Remediation

If Local Agency becomes aware of any Incident, it shall notify the State immediately and cooperate with the State regarding recovery, remediation, and the necessity to involve law enforcement, as determined by the State. Unless Local Agency can establish that none of Local Agency or any of its agents, employees, assigns or Subcontractors are the cause or source of the Incident, Local Agency shall be responsible for the cost of notifying each person who may have been impacted by the Incident. After an Incident, Local Agency shall take steps to reduce the risk of incurring a similar type of Incident in the future as directed by the State, which

may include, but is not limited to, developing and implementing a remediation plan that is approved by the State at no additional cost to the State.

11. CONFLICTS OF INTEREST

A. Actual Conflicts of Interest

Local Agency shall not engage in any business or activities, or maintain any relationships that conflict in any way with the full performance of the obligations of Local Agency under this Agreement. Such a conflict of interest would arise when a Local Agency or Subcontractor's employee, officer or agent were to offer or provide any tangible personal benefit to an employee of the State, or any member of his or her immediate family or his or her partner, related to the award of, entry into or management or oversight of this Agreement. Officers, employees and agents of Local Agency may neither solicit nor accept gratuities, favors or anything of monetary value from contractors or parties to subcontracts.

B. Apparent Conflicts of Interest

Local Agency acknowledges that, with respect to this Agreement, even the appearance of a conflict of interest shall be harmful to the State's interests. Absent the State's prior written approval, Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of Local Agency's obligations under this Agreement.

C. Disclosure to the State

If a conflict or the appearance of a conflict arises, or if Local Agency is uncertain whether a conflict or the appearance of a conflict has arisen, Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the actual or apparent conflict constitutes a breach of this Agreement.

12. INSURANCE

Local Agency shall obtain and maintain, and ensure that each Subcontractor shall obtain and maintain, insurance as specified in this section at all times during the term of this Agreement. All insurance policies required by this Agreement that are not provided through self-insurance shall be issued by insurance companies with an AM Best rating of A-VIII or better.

A. Local Agency Insurance

Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S. (the "GIA") and shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA.

B. Subcontractor Requirements

Local Agency shall ensure that each Subcontractor that is a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement, such liability insurance, by commercial policy or self-insurance, as is necessary to meet the Subcontractor's obligations under the GIA. Local Agency shall ensure that each Subcontractor that is not a public entity within the meaning of the GIA, maintains at all times during the terms of this Agreement all of the following insurance policies:

i. Workers' Compensation

Workers' compensation insurance as required by state statute, and employers' liability insurance covering all Local Agency or Subcontractor employees acting within the course and scope of their employment.

ii. General Liability

Commercial general liability insurance written on an Insurance Services Office occurrence form, covering premises operations, fire damage, independent contractors, products and completed operations, blanket contractual liability, personal injury, and advertising liability with minimum limits as follows:

- a. \$1,000,000 each occurrence;
- b. \$1,000,000 general aggregate;

- c. \$1,000,000 products and completed operations aggregate; and
 - d. \$50,000 any 1 fire.
 - iii. Automobile Liability
Automobile liability insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.
 - iv. Protected Information
Liability insurance covering all loss of State Confidential Information, such as PII, PHI, PCI, Tax Information, and CJL, and claims based on alleged violations of privacy rights through improper use or disclosure of protected information with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$2,000,000 general aggregate.
 - v. Professional Liability Insurance
Professional liability insurance covering any damages caused by an error, omission or any negligent act with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$1,000,000 general aggregate.
 - vi. Crime Insurance
Crime insurance including employee dishonesty coverage with minimum limits as follows:
 - a. \$1,000,000 each occurrence; and
 - b. \$1,000,000 general aggregate.
- C. Additional Insured
The State shall be named as additional insured on all commercial general liability policies (leases and construction contracts require additional insured coverage for completed operations) required of Local Agency and Subcontractors. In the event of cancellation of any commercial general liability policy, the carrier shall provide at least 10 days prior written notice to CDOT.
- D. Primacy of Coverage
Coverage required of Local Agency and each Subcontractor shall be primary over any insurance or self-insurance program carried by Local Agency or the State.
- E. Cancellation
All commercial insurance policies shall include provisions preventing cancellation or non-renewal, except for cancellation based on non-payment of premiums, without at least 30 days prior notice to Local Agency and Local Agency shall forward such notice to the State in accordance with §16 within 7 days of Local Agency's receipt of such notice.
- F. Subrogation Waiver
All commercial insurance policies secured or maintained by Local Agency or its Subcontractors in relation to this Agreement shall include clauses stating that each carrier shall waive all rights of recovery under subrogation or otherwise against Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.
- G. Certificates
For each commercial insurance plan provided by Local Agency under this Agreement, Local Agency shall provide to the State certificates evidencing Local Agency's insurance coverage required in this Agreement within 7 Business Days following the Effective Date. Local Agency shall provide to the State certificates evidencing Subcontractor insurance coverage required under this Agreement within 7 Business Days following the Effective Date, except that, if Local Agency's subcontract is not in effect as of the Effective

Date, Local Agency shall provide to the State certificates showing Subcontractor insurance coverage required under this Agreement within 7 Business Days following Local Agency's execution of the subcontract. No later than 15 days before the expiration date of Local Agency's or any Subcontractor's coverage, Local Agency shall deliver to the State certificates of insurance evidencing renewals of coverage. At any other time during the term of this Agreement, upon request by the State, Local Agency shall, within 7 Business Days following the request by the State, supply to the State evidence satisfactory to the State of compliance with the provisions of this §12.

13. BREACH

A. Defined

The failure of a Party to perform any of its obligations in accordance with this Agreement, in whole or in part or in a timely or satisfactory manner, shall be a breach. The institution of proceedings under any bankruptcy, insolvency, reorganization or similar law, by or against Local Agency, or the appointment of a receiver or similar officer for Local Agency or any of its property, which is not vacated or fully stayed within 30 days after the institution of such proceeding, shall also constitute a breach.

B. Notice and Cure Period

In the event of a breach, the aggrieved Party shall give written notice of breach to the other Party. If the notified Party does not cure the breach, at its sole expense, within 30 days after the delivery of written notice, the Party may exercise any of the remedies as described in §14 for that Party. Notwithstanding any provision of this Agreement to the contrary, the State, in its discretion, need not provide notice or a cure period and may immediately terminate this Agreement in whole or in part or institute any other remedy in the Agreement in order to protect the public interest of the State.

14. REMEDIES

A. State's Remedies

If Local Agency is in breach under any provision of this Agreement and fails to cure such breach, the State, following the notice and cure period set forth in §13.B, shall have all of the remedies listed in this §14.A. in addition to all other remedies set forth in this Agreement or at law. The State may exercise any or all of the remedies available to it, in its discretion, concurrently or consecutively.

i. Termination for Breach

In the event of Local Agency's uncured breach, the State may terminate this entire Agreement or any part of this Agreement. Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

a. Obligations and Rights

To the extent specified in any termination notice, Local Agency shall not incur further obligations or render further performance past the effective date of such notice, and shall terminate outstanding orders and subcontracts with third parties. However, Local Agency shall complete and deliver to the State all Work not 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, Local Agency shall assign to the State all of Local Agency's rights, title, and interest in and to such terminated orders or subcontracts. Upon termination, Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of Local Agency but in which the State has an interest. At the State's request, Local Agency shall return materials owned by the State in Local Agency's possession at the time of any termination. Local Agency shall deliver all completed Work Product and all Work Product that was in the process of completion to the State at the State's request.

b. Payments

Notwithstanding anything to the contrary, the State shall only pay Local Agency for accepted Work received as of the date of termination. If, after termination by the State, the State agrees that Local Agency was not in breach or that Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest, and the rights and obligations of the Parties shall be as if this Agreement had been terminated in the public interest under §2.C.

c. Damages and Withholding

Notwithstanding any other remedial action by the State, Local Agency shall remain liable to the State for any damages sustained by the State in connection with any breach by Local Agency, and the State may withhold payment to Local Agency for the purpose of mitigating the State's damages until such time as the exact amount of damages due to the State from Local Agency is determined. The State may withhold any amount that may be due Local Agency as the State deems necessary to protect the State against loss including, without limitation, loss as a result of outstanding liens and excess costs incurred by the State in procuring from third parties replacement Work as cover.

ii. Remedies Not Involving Termination

The State, in its discretion, may exercise one or more of the following additional remedies:

a. Suspend Performance

Suspend Local Agency's performance with respect to all or any portion of the Work pending corrective action as specified by the State without entitling Local Agency to an adjustment in price or cost or an adjustment in the performance schedule. Local Agency shall promptly cease performing Work and incurring costs in accordance with the State's directive, and the State shall not be liable for costs incurred by Local Agency after the suspension of performance.

b. Withhold Payment

Withhold payment to Local Agency until Local Agency corrects its Work.

c. Deny Payment

Deny payment for Work not performed, or that due to Local Agency's actions or inactions, cannot be performed or if they were performed are reasonably of no value to the state; provided, that any denial of payment shall be equal to the value of the obligations not performed.

d. Removal

Demand immediate removal from the Work of any of Local Agency's employees, agents, or Subcontractors from the Work whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable or whose continued relation to this Agreement is deemed by the State to be contrary to the public interest or the State's best interest.

e. Intellectual Property

If any Work infringes a patent, copyright, trademark, trade secret, or other intellectual property right, Local Agency shall, as approved by the State (a) secure that right to use such Work for the State or Local Agency; (b) replace the Work with noninfringing Work or modify the Work so that it becomes noninfringing; or, (c) remove any infringing Work and refund the amount paid for such Work to the State.

B. Local Agency's Remedies

If the State is in breach of any provision of this Agreement and does not cure such breach, Local Agency, following the notice and cure period in §13.B and the dispute resolution process in §15 shall have all remedies available at law and equity.

15. DISPUTE RESOLUTION

A. Initial Resolution

Except as herein specifically provided otherwise, disputes concerning the performance of this Agreement which cannot be resolved by the designated Agreement representatives shall be referred in writing to a senior departmental management staff member designated by the State and a senior manager designated by Local Agency for resolution.

B. Resolution of Controversies

If the initial resolution described in §15.A fails to resolve the dispute within 10 Business Days, Contractor shall submit any alleged breach of this Contract by the State to the Procurement Official of CDOT as

described in §24-101-301(30), C.R.S. for resolution in accordance with the provisions of §§24-106-109, 24-109-101.1, 24-109-101.5, 24-109-106, 24-109-107, 24-109-201 through 24-109-206, and 24-109-501 through 24-109-505, C.R.S., (the “Resolution Statutes”), except that if Contractor wishes to challenge any decision rendered by the Procurement Official, Contractor’s challenge shall be an appeal to the executive director of the Department of Personnel and Administration, or their delegate, under the Resolution Statutes before Contractor pursues any further action as permitted by such statutes. Except as otherwise stated in this Section, all requirements of the Resolution Statutes shall apply including, without limitation, time limitations.

16. NOTICES AND REPRESENTATIVES

Each individual identified below shall be the principal representative of the designating Party. All notices required or permitted to be given under this Agreement shall be in writing, and shall be delivered (i) by hand with receipt required, (ii) by certified or registered mail to such Party’s principal representative at the address set forth below or (iii) as an email with read receipt requested to the principal representative at the email address, if any, set forth below. If a Party delivers a notice to another through email and the email is undeliverable, then, unless the Party has been provided with an alternate email contact, the Party delivering the notice shall deliver the notice by hand with receipt required or by certified or registered mail to such Party’s principal representative at the address set forth below. Either Party may change its principal representative or principal representative contact information by notice submitted in accordance with this §16 without a formal amendment to this Agreement. Unless otherwise provided in this Agreement, notices shall be effective upon delivery of the written notice.

For the State

Colorado Department of Transportation (CDOT)
Grant Rilling, EIT II
CDOT - Region 1
2829 W Howard Pl., 2 nd floor
Denver, CO 80204
303-757-9414
grant.rilling@state.co.us

For the Local Agency

City of Aurora
Carlie Campuzano, Traffic Manager
15151 E Alameda Parkway
Aurora, CO 80012
303-739-7300
ccampuza@auroragov.org

17. RIGHTS IN WORK PRODUCT AND OTHER INFORMATION

A. Work Product

Local Agency assigns to the State and its successors and assigns, the entire right, title, and interest in and to all causes of action, either in law or in equity, for past, present, or future infringement of intellectual property rights related to the Work Product and all works based on, derived from, or incorporating the Work Product. Whether or not Local Agency is under contract with the State at the time, Local Agency shall execute applications, assignments, and other documents, and shall render all other reasonable assistance requested by the State, to enable the State to secure patents, copyrights, licenses and other intellectual property rights related to the Work Product. The Parties intend the Work Product to be works made for hire.

i. Copyrights

To the extent that the Work Product (or any portion of the Work Product) would not be considered works made for hire under applicable law, Local Agency hereby assigns to the State, the entire right, title, and interest in and to copyrights in all Work Product and all works based upon, derived from, or incorporating the Work Product; all copyright applications, registrations, extensions, or renewals relating to all Work Product and all works based upon, derived from, or incorporating the Work Product; and all moral rights

or similar rights with respect to the Work Product throughout the world. To the extent that Local Agency cannot make any of the assignments required by this section, Local Agency hereby grants to the State a perpetual, irrevocable, royalty-free license to use, modify, copy, publish, display, perform, transfer, distribute, sell, and create derivative works of the Work Product and all works based upon, derived from, or incorporating the Work Product by all means and methods and in any format now known or invented in the future. The State may assign and license its rights under this license.

ii. Patents

In addition, Local Agency grants to the State (and to recipients of Work Product distributed by or on behalf of the State) a perpetual, worldwide, no-charge, royalty-free, irrevocable patent license to make, have made, use, distribute, sell, offer for sale, import, transfer, and otherwise utilize, operate, modify and propagate the contents of the Work Product. Such license applies only to those patent claims licensable by Local Agency that are necessarily infringed by the Work Product alone, or by the combination of the Work Product with anything else used by the State.

B. Exclusive Property of the State

Except to the extent specifically provided elsewhere in this Agreement, any pre-existing State Records, State software, research, reports, studies, photographs, negatives, or other documents, drawings, models, materials, data, and information shall be the exclusive property of the State (collectively, "State Materials"). Local Agency shall not use, willingly allow, cause or permit Work Product or State Materials to be used for any purpose other than the performance of Local Agency's obligations in this Agreement without the prior written consent of the State. Upon termination of this Agreement for any reason, Local Agency shall provide all Work Product and State Materials to the State in a form and manner as directed by the State.

18. GOVERNMENTAL IMMUNITY

Liability for claims for injuries to persons or property arising from the negligence of the Parties, their departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the GIA; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S.

19. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this §19 shall apply. Local Agency agrees to be governed by and comply with the provisions of §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 C.R.S. regarding the monitoring of vendor performance and the reporting of contract performance information in the State's contract management system ("Contract Management System" or "CMS"). Local Agency's performance shall be subject to evaluation and review in accordance with the terms and conditions of this Agreement, Colorado statutes governing CMS, and State Fiscal Rules and State Controller policies.

20. GENERAL PROVISIONS

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement

B. Subcontracts

Local Agency shall not enter into any subcontract in connection with its obligations under this Agreement without the prior, written approval of the State. Local Agency shall submit to the State a copy of each such subcontract upon request by the State. All subcontracts entered into by Local Agency in connection with this Agreement shall comply with all applicable federal and state laws and regulations, shall provide that they are governed by the laws of the State of Colorado, and shall be subject to all provisions of this Agreement.

C. Binding Effect

Except as otherwise provided in §20.A, all provisions of this Agreement, including the benefits and burdens, shall extend to and be binding upon the Parties' respective successors and assigns.

D. Authority

Each Party represents and warrants to the other that the execution and delivery of this Agreement and the performance of such Party's obligations have been duly authorized.

E. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

F. Counterparts

This Agreement may be executed in multiple, identical, original counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

G. 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. Jurisdiction and Venue

All suits or actions related to this Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

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 contract amendments, shall conform to the policies promulgated 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. Order of Precedence

In the event of a conflict or inconsistency between this Agreement and any exhibits or attachment such conflict or inconsistency shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions in the main body of this Agreement.
- ii. The provisions of the other sections of the main body of this Agreement.
- iii. **Exhibit A**, Statement of Work.
- iv. **Exhibit D**, Local Agency Resolution.
- v. **Exhibit C**, Funding Provisions.
- vi. **Exhibit B**, Sample Option Letter.
- vii. **Exhibit E**, Local Agency Contract Administration Checklist.
- viii. Other exhibits in descending order of their attachment.

L. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under this Agreement in accordance with the intent of the Agreement.

M. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

N. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described in **§20.C**, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

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 §24-103.5-101 C.R.S., if any, are subject to public release through the CORA.

Q. Standard and Manner of Performance

Local Agency shall perform its obligations under this Agreement in accordance with the highest standards of care, skill and diligence in Local Agency's industry, trade, or profession.

R. Licenses, Permits, and Other Authorizations.

Local Agency shall secure, prior to the Effective Date, and maintain at all times during the term of this Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under this Agreement, and shall ensure that all employees, agents and Subcontractors secure and maintain at all times during the term of their employment, agency or subcontract, all license, certifications, permits and other authorizations required to perform their obligations in relation to this Agreement.

21. 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 Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(2.6), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. FUND AVAILABILITY. §24-30-202(5.5), C.R.S.

Financial obligations of the State payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. GOVERNMENTAL IMMUNITY.

Liability for claims for injuries to persons or property arising from the negligence of the State, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, et seq., C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, et seq. C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. INDEPENDENT CONTRACTOR

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State.

Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. COMPLIANCE WITH LAW.

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. CHOICE OF LAW, JURISDICTION, AND VENUE.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. PROHIBITED TERMS.

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. SOFTWARE PIRACY PROHIBITION.

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. EMPLOYEE FINANCIAL INTEREST/CONFLICT OF INTEREST. §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

J. VENDOR OFFSET AND ERRONEOUS PAYMENTS. §§24-30-202(1) and 24-30-202.4, C.R.S.

[*Not applicable to intergovernmental agreements*] Subject to §24-30-202.4(3.5), C.R.S., the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (i) unpaid child support debts or child support arrearages; (ii) unpaid balances of tax, accrued interest, or other charges specified in §§39-21-101, *et seq.*, C.R.S.; (iii) unpaid loans due to the Student Loan Division of the Department of Higher Education; (iv) amounts required to be paid to the Unemployment Compensation Fund; and (v) other unpaid debts owing to the State as a result of final agency determination or judicial action. The State may also recover, at the State's discretion, payments made to Contractor in error for any reason, including, but not limited to, overpayments or improper payments, and unexpended or excess funds received by Contractor by deduction from subsequent payments under this Contract, deduction from any payment due

under any other contracts, grants or agreements between the State and Contractor, or by any other appropriate method for collecting debts owed to the State.

K. PUBLIC CONTRACTS FOR SERVICES. §§8-17.5-101, et seq., C.R.S.

[Not applicable to agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental agreements, or information technology services or products and services] Contractor certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who will perform work under this Contract and will confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Contract, through participation in the E-Verify Program or the State verification program established pursuant to §8-17.5-102(5)(c), C.R.S., Contractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract or enter into a contract with a Subcontractor that fails to certify to Contractor that the Subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Contract. Contractor **(i)** shall not use E-Verify Program or the program procedures of the Colorado Department of Labor and Employment (“Department Program”) to undertake pre-employment screening of job applicants while this Contract is being performed, **(ii)** shall notify the Subcontractor and the contracting State agency or institution of higher education within 3 days if Contractor has actual knowledge that a Subcontractor is employing or contracting with an illegal alien for work under this Contract, **(iii)** shall terminate the subcontract if a Subcontractor does not stop employing or contracting with the illegal alien within 3 days of receiving the notice, and **(iv)** shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to §8-17.5-102(5), C.R.S., by the Colorado Department of Labor and Employment. If Contractor participates in the Department program, Contractor shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that Contractor has examined the legal work status of such employee, and shall comply with all of the other requirements of the Department program. If Contractor fails to comply with any requirement of this provision or §§8-17.5-101, et seq., C.R.S., the contracting State agency, institution of higher education or political subdivision may terminate this Contract for breach and, if so terminated, Contractor shall be liable for damages.

L. PUBLIC CONTRACTS WITH NATURAL PERSONS. §§24-76.5-101, et seq., C.R.S.

Contractor, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that Contractor **(i)** is a citizen or otherwise lawfully present in the United States pursuant to federal law, **(ii)** shall comply with the provisions of §§24-76.5-101, et seq., C.R.S., and **(iii)** has produced one form of identification required by §24-76.5-103, C.R.S. prior to the Effective Date of this Contract.

Revised 11-1-18

22. FEDERAL REQUIREMENTS

Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and State laws, and their implementing regulations, as they currently exist and may hereafter be amended. A summary of applicable federal provisions are attached hereto as Exhibit F, Exhibit I, Exhibit J, Exhibit K and Exhibit M are hereby incorporated by this reference.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

Local Agency will comply with all requirements of Exhibit G and Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program’s requirements to the State for review and approval before the execution of this Agreement. If Local Agency uses any State- approved DBE program for this Agreement, Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of Local Agency’s DBE program does not waive or modify the sole responsibility of Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

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EXHIBIT A
SCOPE OF WORK

Aurora - Havana Street Transit Improvements
AQC 030A-040 (23619)

The Havana Street Transit Improvement project includes improvements along Havana St between Dartmouth Ave and Montview Blvd. The project will improve the region's multimodal transportation system, services, and connections by improving the speed, reliability, and comfort of using transit. The project will include queue jumps, bypass lanes for transit, bus bulb outs with amenity upgrades, transit signal priority at signalized intersections, and additional amenity upgrades at existing bus stops. Construction work will be completed by a contractor through a competitive bid process by the City of Aurora.

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EXHIBIT B

SAMPLE IGA OPTION LETTER

Date	State Fiscal Year	Option Letter No.
Project Code	Original Agreement #	

Vendor Name: _____

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous and to update encumbrance amount(s).

Option to unilaterally transfer funds from one phase to another phase.

Option to unilaterally add phasing to include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous, to update encumbrance amount(s), and to unilaterally transfer funds from one phase to another phase.

Option to unilaterally extend the performance of this Agreement and/or update a Work Phase Performance Period.

Option A

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency), the State hereby exercises the option to authorize the Local Agency to add a phase and to encumber funds for the phase based on changes in funding availability and authorization. The total encumbrance is (or increased) by \$0.00. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option B

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to transfer funds based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option C

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option to 1) release the Local Agency to begin a phase; 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from phases based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**.

Option D

In accordance with the terms of the original Agreement between the State of Colorado, Department of Transportation and the Local Agency, the State hereby exercises the option extend the performance of this Agreement and/or update a Work Phase Performance Period.

The total encumbrance as a result of this option and all previous options and/or amendments is now \$0.00, as referenced in **Exhibit C-1**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: as referenced in **Exhibit C-1**.

The effective date of this option letter is upon approval of the State Controller or delegate.

STATE OF COLORADO
Jared S. Polis
Department of Transportation

By: _____
Stephen Harelson, P.E., Chief Engineer
(For) Shoshana M. Lew, Executive Director

Date: _____

ALL AGREEMENTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

STATE OF COLORADO
STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

EXHIBIT C
FUNDING PROVISIONS

EXHIBIT C – FUNDING PROVISIONS

AQC 030A-040 (23619)

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work to be \$674,475.00, which is to be funded as follows:

1. BUDGETED FUNDS				
a. Federal Funds (80.00% of Participating Costs)				\$539,580.00
b. Local Agency Matching Funds (20.00% of Participating Costs)				\$134,895.00
TOTAL BUDGETED FUNDS				\$674,475.00
2. OMB UNIFORM GUIDANCE				
a. Federal Award Identification Number (FAIN):				TBD
b. Federal Award Date (also Phase Performance StartDate):				See Below
c. Amount of Federal Funds Obligated:				\$0.00
d. Total Amount of Federal Award:				\$539,580.00
e. Name of Federal Awarding Agency:				FHWA
f. CFDA # Highway Planning and Construction				CFDA 20.205
g. Is the Award for R&D?				No
h. Indirect Cost Rate (if applicable)				N/A
3. ESTIMATED PAYMENT TO LOCAL AGENCY				
a. Federal Funds Budgeted				\$539,580.00
b. Less Estimated Federal Share of CDOT-Incurred Costs				\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY				\$539,580.00
4. FOR CDOT ENCUMBRANCE PURPOSES				
a. Total Encumbrance Amount				\$674,475.00
b. Less ROW Acquisition 3111 and/or ROW Relocation 3109				\$0.00
Net to be encumbered as follows:				\$674,475.00
<i>Note: No funds are currently available. Design and Construction funds will become available after execution of an Option letter (Exhibit B) or formal Amendment.</i>				
WBS Element 23619.10.30	Performance Period Start*/End Date TBD / TBD	Design	3020	\$0.00
WBS Element 23619.20.10	Performance Period Start*/End Date TBD / TBD	Const.	3301	\$0.00

***The Local Agency should not begin work until all three of the following are in place: 1) Phase Performance Period Start Date; 2) the execution of the document encumbering funds for the respective phase; and 3) Local Agency receipt of the official Notice to Proceed. Any work performed before these three milestones are achieved will not be reimbursable.**

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 80.00% federal-aid funds to 20.00% Local Agency funds, it being understood that such ratio applies only to the \$674,475.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$674,475.00, and additional federal funds are made available for the Work, the Local Agency shall pay 20.00% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$674,475.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$539,580.00 (for CDOT accounting purposes, the federal funds of \$539,580.00 and the Local Agency matching funds of \$134,895.00 will be encumbered for a total encumbrance of \$674,475.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

The maximum amount payable shall be reduced without amendment when the actual amount of the Local Agency's awarded contract is less than the budgeted total of the federal participating funds and the Local Agency matching funds. The maximum amount payable shall be reduced through the execution of an Option Letter as described in Section 7. E. of this contract.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving \$750,000 or more from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of 2 CFR part 200, subpart F (Audit Requirements) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$750,000

If the Local Agency expends less than \$750,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure of \$750,000 or more-Highway Funds Only

If the Local Agency expends \$750,000 or more, in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure of \$750,000 or more-Multiple Funding Sources

If the Local Agency expends \$750,000 or more in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

EXHIBIT D

LOCAL AGENCY RESOLUTION (IF APPLICABLE)

EXHIBIT E LOCAL AGENCY AGREEMENT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. AQC 030A-040	STIP No. SDR6744	Project Code 23619	Region 01
Project Location Havana St (SH30), between Dartmouth and Montview			Date 01/19/2021
Project Description Havana St transit improvements-Aurora			
Local Agency City of Aurora		Local Agency Project Manager Carlie Campuzano	
CDOT Resident Engineer Benjamin Kiene		CDOT Project Manager Grant Rilling	
INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i> . The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve. Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT. The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist. Note: Failure to comply with applicable Federal and State requirements may result in the loss of Federal or State participation in funding.			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	X
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement <ul style="list-style-type: none"> • Project Development • Construction Contract Administration (including Fabrication Inspection Services) 	X	#
5.4	Conduct Design Scoping Review Meeting	X	X
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	X
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	#
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)	X	#
5.9	Obtain Utility and Railroad Agreements	X	
5.10	Conduct Final Office Review (FOR)	X	X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
5.11	Justify Force Account Work by the Local Agency	X	X
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items	X	
5.13	Document Design Exceptions - CDOT Form 464	X	#
5.14	Prepare Plans, Specifications, Construction Cost Estimates and Submittals	X	
5.15	Ensure Authorization of Funds for Construction		X
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Disadvantaged Business Enterprise (DBE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist).		X
6.2	Determine Applicability of Davis-Bacon Act This project <input type="checkbox"/> is <input checked="" type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) Benjamin Kiene Digitally signed by Benjamin Kiene Date: 2021.02.26 13:33:33 -07'00' <u>2/26/21</u> _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances		X
	Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD of CONSTRUCTION PROJECTS			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	#
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 1415 – Commitment Confirmation when the low bidder meets DBE goals		X
	Evaluate CDOT Form 1416 - Good Faith Effort Report and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	#
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT			
8.1	Issue Notice to Proceed to the Contractor	X	
8.2	Project Safety	X	
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B) • Fabrication Inspection Notifications	X	
	Pre-survey • Construction staking • Monumentation	X	
	Partnering (Optional)	X	
	Structural Concrete Pre-Pour (Agenda is in <i>CDOT Construction Manual</i>)	X	
	Concrete Pavement Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
	HMA Pre-Paving (Agenda is in <i>CDOT Construction Manual</i>)	X	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." <u>Carlie Campuzano</u> <u>303 739 7300</u> Local Agency Professional Engineer or Phone number CDOT Resident Engineer	X	
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	X	
	Construction inspection and documentation	X	
	Fabrication Inspection and documentation	X	
8.6	Approve Shop Drawings	X	X
8.7	Perform Traffic Control Inspections	X	
8.8	Perform Construction Surveying	X	
8.9	Monument Right-of-Way	X	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates. Collect and review CDOT Form 1418 (or equivalent)		
	Provide the name and phone number of the person authorized for this task. <u>Carlie Campuzano</u> <u>303 739 7300</u> Local Agency Representative Phone number	X	
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	X	
8.12	Prepare and Authorize Change Orders	X	
8.13	Submit Change Order Package to CDOT	X	
8.14	Prepare Local Agency Reimbursement Requests	X	
8.15	Monitor Project Financial Status		
8.16	Prepare and Submit Monthly Progress Reports	X	
8.17	Resolve Contractor Claims and Disputes	X	
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task. <u>Benjamin Kiene</u> <u>303-512-4025</u> CDOT Resident Engineer Phone number		X
8.19	Ongoing Oversight of DBE Participation	X	
MATERIALS			
9.1	Discuss Materials at Pre-Construction Meeting • Buy America documentation required prior to installation of steel	X	X
9.2	Complete CDOT Form 250 - Materials Documentation Record • Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project • Update the form as work progresses • Complete and distribute form after work is completed	X	X
9.3	Perform Project Acceptance Samples and Tests	X	
9.4	Perform Laboratory Verification Tests	X	
9.5	Accept Manufactured Products Inspection of structural components: • Fabrication of structural steel and pre-stressed concrete structural components • Bridge modular expansion devices (0" to 6" or greater) • Fabrication of bearing devices	X	
9.6	Approve Sources of Materials	X	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input checked="" type="checkbox"/> • Generate IAT schedule • Schedule and provide notification • Conduct IAT	X	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
9.8	Approve mix designs <ul style="list-style-type: none"> • Concrete • Hot mix asphalt 	X	
9.9	Check Final Materials Documentation	X	X
9.10	Complete and Distribute Final Materials Documentation		X
CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	X	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	X	X
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	X	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	X	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. <ul style="list-style-type: none"> • Complete CDOT Form 1337 – Contractor Commitment to Meet OJT Requirements. • Complete CDOT Form 838 – OJT Trainee / Apprentice Record. • Complete CDOT Form 200 - OJT Training Questionnaire 	X	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	X	X
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	X	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	X	
11.5	Prepare EEO Certification and Collect EEO Forms	X	
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	X	X
11.8	Obtain CDOT Form 1419 from the Contractor and Submit to the CDOT Project Manager	X	
11.9	(FHWA Form 47 discontinued)	X	
11.10	Complete and Submit CDOT Form 1212 – Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment	X	
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist	X	X

cc: CDOT Resident Engineer/Project Manager
CDOT Region Program Engineer
CDOT Region EEO/Civil Rights Specialist
CDOT Region Materials Engineer
CDOT Contracts and Market Analysis Branch
Local Agency Project Manager

EXHIBIT F
CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

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

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

EXHIBIT G
DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request: Business Programs Office

Colorado Department of Transportation 2829 West Howard Place

Denver, Colorado 80204

Phone: (303) 757-9007

REVISED 1/22/98

REQUIRED BY 49 CFR PART 26

EXHIBIT H

LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded Local Agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states “The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost” and according to 23 CFR 172.5 “Price shall not be used as a factor in the analysis and selection phase.” Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a Local Agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting Local Agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting Local Agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The Local Agency shall not advertise any federal aid contract without prior review by the CDOT Regional Civil Rights Office (RCRO) to determine whether the contract shall be subject to a DBE contract goal. If the RCRO determines a goal is necessary, then the Local Agency shall include the goal and the applicable provisions within the advertisement. The Local Agency shall not award a contract to any Contractor or Consultant without the confirmation by the CDOT Civil Rights and Business Resource Center that the Contractor or Consultant has demonstrated good faith efforts. The Local Agency shall work with the CDOT RCRO to ensure compliance with the established terms during the performance of the contract.
5. The Local Agency shall require that all contractors pay subcontractors for satisfactory performance of work no later than 30 days after the receipt of payment for that work from the contractor. For construction projects, this time period shall be reduced to seven days in accordance with Colorado Revised Statute 24-91-103(2). If the Local Agency withholds retainage from contractors and/or allows contractors to withhold retainage from subcontractors, such retainage provisions must comply with 49 CFR 26.29.
6. Payments to all Subconsultants shall be made within thirty days of receipt of payment from [the Local Agency] or no later than ninety days from the date of the submission of a complete invoice from the Subconsultant, whichever occurs first. If the Consultant has good cause to dispute an amount invoiced by a Subconsultant, the Consultant shall notify [the Local Agency] no later than the required date for payment. Such notification shall include the amount disputed and justification for the withholding. The Consultant shall maintain records of payment that show amounts paid to all Subconsultants. Good cause does not include the Consultant's failure to submit an invoice to the Local Agency or to deposit payments made.
7. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,

- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services. Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
- b. Past performance,
- c. Willingness to meet the time and budget requirement,
- d. Location,
- e. Current and projected work load,
- f. Volume of previously awarded contracts, and
- g. Involvement of minority consultants.

8. Once a consultant is selected, the Local Agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.

9. A qualified Local Agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the Local Agency prepares a performance evaluation (a CDOT form is available) on the consultant.

CRS §§24-30-1401 THROUGH 24-30-1408, 23 CFR PART 172, AND P.D. 400.1, PROVIDE ADDITIONAL DETAILS FOR COMPLYING WITH THE PRECEEDING EIGHT (8) STEPS.

EXHIBIT I

FEDERAL-AID CONTRACT PROVISIONS FOR CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Government wide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design- build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension/debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60- 1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. **Training and Promotion:**

The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

a. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a).

b. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

c. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. **Reasonable Accommodation for Applicants / Employees with Disabilities:** The contractor must be familiar with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract.

The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on [Form FHWA-1391](#). The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt.

Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA- 1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b. (1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account, assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally- assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis- Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements.

It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency.

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

- (i) That the payroll for the payroll period contains the information required to be provided under §5.5(a)(3)
- (ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under §5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;
- (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
- (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a. of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL).

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL).

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices.

Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity.

The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S.DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination: debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and

7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

- a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
- c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contacting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY: ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.

2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below.

The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

- c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.
- d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
- e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).
- f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
- g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.
- h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph(a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20).

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

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

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT AND MATERIALS PREFERENCE FOR APPALACHIAN DEVELOPMENT HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS ROAD CONTRACTS

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J

ADDITIONAL FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

Nondiscrimination

The Local Agency shall not exclude from participation in, deny the benefits of, or subject to discrimination any person in the United States on the ground of race, color national origin, sex, age or disability. Prior to the receipt of any Federal financial assistance from CDOT, the Local Agency shall execute the attached Standard DOT Title VI assurance. As appropriate, the Local Agency shall include Appendix A, B, or C to the Standard DOT Title VI assurance in any contract utilizing federal funds, land or other aid. The Local Agency shall also include the following in all contract advertisements:

The [Local Agency], in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (79 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, DBEs will be afforded full and fair opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for any award.

ADA

In any contract utilizing federal funds, land, or other federal aid, the Local Agency shall require the federal-aid recipient or contractor to provide a statement of written assurance that they will comply with Section 504 and not discriminate on the basis of disability.

Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 *et seq.*).

Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 *et. seq.* and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions §22

The Contractor will include the provisions of this Exhibit J in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

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SAMPLE

The United States Department of Transportation (USDOT) Standard Title VI/Non-Discrimination

Assurances for Local Agencies

DOT Order No. 1050.2A

The [Local Agency] (herein referred to as the "Recipient"), **HEREBY AGREES THAT**, as a condition to receiving any Federal financial assistance from the U.S. Department of Transportation (DOT), through the Colorado Department of Transportation and the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), is subject to and will comply with the following:

Statutory/Regulatory Authorities

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin);
- 49 C.F.R. Part 21 (entitled Non-discrimination In Federally-Assisted Programs Of The Department Of Transportation-Effectuation Of Title VI Of The Civil Rights Act Of 1964);
- 28 C.F.R. section 50.3 (U.S. Department of Justice Guidelines for Enforcement of Title VI of the Civil Rights Act of 1964);

The preceding statutory and regulatory cites hereinafter are referred to as the "Acts" and "Regulations," respectively.

General Assurances

In accordance with the Acts, the Regulations, and other pertinent directives, circulars, policy, memoranda, and/or guidance, the Recipient hereby gives assurance that it will promptly take any measures necessary to ensure that:

"No person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity, for which the Recipient receives Federal financial assistance from DOT, including the FHWA, FTA, or FAA.

The Civil Rights Restoration Act of 1987 clarified the original intent of Congress, with respect to Title VI and other Non-discrimination requirements (The Age Discrimination Act of 1975, and Section 504 of the Rehabilitation Act of 1973), by restoring the broad, institutional-wide scope and coverage of these non-discrimination statutes and requirements to include all programs and activities of the Recipient, so long as any portion of the program is Federally assisted.

Specific Assurances

More specifically, and without limiting the above general Assurance, the Recipient agrees with and gives the following Assurances with respect to its Federally assisted FHWA, FTA, and FAA assisted programs:

1. The Recipient agrees that each "activity," "facility," or "program," as defined in §§ 21.23(b) and 21.23(e) of 49 C.F.R. § 21 will be (with regard to an "activity") facilitated, or will be (with regard to a "facility") operated, or will be (with regard to a "program") conducted in compliance with all requirements imposed by, or pursuant to the Acts and the Regulations.
2. The Recipient will insert the following notification in all solicitations for bids, Requests For Proposals for work, or material subject to the Acts and the Regulations made in connection with all FHWA, FTA and FAA programs and, in adapted form, in all proposals for negotiated agreements regardless of funding source:
3. "The [Local Agency] in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§ 2000d to 2000d-4) and the Regulations, hereby notifies all bidders that it will affirmatively ensure that any contract entered into pursuant to this advertisement, disadvantaged business enterprises will be afforded full and fair opportunity

4. to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award."
5. The Recipient will insert the clauses of Appendix A and E of this Assurance in every contract or agreement subject to the Acts and the Regulations.
6. The Recipient will insert the clauses of Appendix B of this Assurance, as a covenant running with the land, in any deed from the United States effecting or recording a transfer of real property, structures, use, or improvements thereon or interest therein to a Recipient.
7. That where the Recipient receives Federal financial assistance to construct a facility, or part of a facility, the Assurance will extend to the entire facility and facilities operated in connection therewith.
8. That where the Recipient receives Federal financial assistance in the form, or for the acquisition of real property or an interest in real property, the Assurance will extend to rights to space on, over, or under such property.
9. That the Recipient will include the clauses set forth in Appendix C and Appendix D of this Assurance, as a covenant running with the land, in any future deeds, leases, licenses, permits, or similar instruments entered into by the Recipient with other parties:
 - a. for the subsequent transfer of real property acquired or improved under the applicable activity, project, or program; and
 - b. for the construction or use of, or access to, space on, over, or under real property acquired or improved under the applicable activity, project, or program.
10. That this Assurance obligates the Recipient for the period during which Federal financial assistance is extended to the program, except where the Federal financial assistance is to provide, or is in the form of, personal property, or real property, or interest therein, or structures or improvements thereon, in which case the Assurance obligates the Recipient, or any transferee for the longer of the following periods:
 - a. the period during which the property is used for a purpose for which the Federal financial assistance is extended, or for another purpose involving the provision of similar services or benefits; or
 - b. the period during which the Recipient retains ownership or possession of the property.
11. The Recipient will provide for such methods of administration for the program as are found by the Secretary of Transportation or the official to whom he/she delegates specific authority to give reasonable guarantee that it, other recipients, sub-recipients, sub-grantees, contractors, subcontractors, consultants, transferees, successors in interest, and other participants of Federal financial assistance under such program will comply with all requirements imposed or pursuant to the Acts, the Regulations, and this Assurance.
12. The Recipient agrees that the United States has a right to seek judicial enforcement with regard to any matter arising under the Acts, the Regulations, and this Assurance.

By signing this ASSURANCE, the [Local Agency] also agrees to comply (and require any sub-recipients, sub-grantees, contractors, successors, transferees, and/or assignees to comply) with all applicable provisions governing the FHWA, FTA, and FAA's access to records, accounts, documents, information, facilities, and staff. You also recognize that you must comply with any program or compliance reviews, and/or complaint investigations conducted by CDOT, FHWA, FTA, or FAA. You must keep records, reports, and submit the material for review

upon request to CDOT, FHWA, FTA, or FAA, or its designee in a timely, complete, and accurate way. Additionally, you must comply with all other reporting, data collection, and evaluation requirements, as prescribed by law or detailed in program guidance.

[Local Agency] gives this ASSURANCE in consideration of and for obtaining any Federal grants, loans, contracts, agreements, property, and/or discounts, or other Federal-aid and Federal financial assistance extended after the date hereof to the recipients by the U.S. Department of Transportation under the FHWA, FTA, and FAA. This ASSURANCE is binding on [Local Agency], other recipients, sub-recipients, sub-grantees, contractors, subcontractors and their subcontractors', transferees, successors in interest, and any other participants in the FHWA, FTA, and FAA funded programs. The person(s) signing below is authorized to sign this ASSURANCE on behalf of the Recipient.

(Name of Recipient)

by _____
(Signature of Authorized Official)

DATED _____

APPENDIX A

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees as follows:

1. **Compliance with Regulations:** The contractor (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, FHWA, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. **Non-discrimination:** The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and the Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR Part 21.
3. **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor's obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. **Information and Reports:** The contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the [Local Agency], CDOT or FHWA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the [Local Agency], CDOT or FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. **Sanctions for Noncompliance:** In the event of a contractor's noncompliance with the Non-discrimination provisions of this contract, the [Local Agency] will impose such contract sanctions as it, CDOT or FHWA may determine to be appropriate, including, but not limited to:
 - a. withholding payments to the contractor under the contract until the contractor complies; and/or
 - b. cancelling, terminating, or suspending a contract, in whole or in part.
6. **Incorporation of Provisions:** The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and directives issued pursuant thereto. The contractor will take action with respect to any subcontract or procurement as the Recipient or the [Local Agency], CDOT or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

APPENDIX B

CLAUSES FOR DEEDS TRANSFERRING UNITED STATES PROPERTY

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the [Local Agency] will accept title to the lands and maintain the project constructed thereon in accordance with (*Name of Appropriate Legislative Authority*), the Regulations for the Administration of (*Name of Appropriate Program*), and the policies and procedures prescribed by the FHWA of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the [Local Agency] all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

(HABENDUM CLAUSE)

TO HAVE AND TO HOLD said lands and interests therein unto [Local Agency] and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the [Local Agency] its successors and assigns.

The [Local Agency], in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the [Local Agency] will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended [, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX C

CLAUSES FOR TRANSFER OF REAL PROPERTY ACQUIRED OR IMPROVED UNDER THE ACTIVITY, FACILITY, OR PROGRAM

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the [Local Agency] pursuant to the provisions of Assurance 7(a):

- A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add "as a covenant running with the land"] that:
 1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.
- B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued. *
- C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the [Local Agency] will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the [Local Agency] and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX D

CLAUSES FOR CONSTRUCTION/USE/ACCESS TO REAL PROPERTY ACQUIRED UNDER THE ACTIVITY, FACILITY OR PROGRAM

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by [Local Agency] pursuant to the provisions of Assurance 7(b):

- A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.
- B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued. *
- C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, [Local Agency] will there upon revert to and vest in and become the absolute property of [Local Agency] of Transportation and its assigns. *

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

APPENDIX E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "contractor") agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d et seq., 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 et seq.), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 et seq.), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 et seq.), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms "programs or activities" to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131-12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration's Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of Limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 et seq).

EXHIBIT K
FFATA SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. Definitions. For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. “Award” means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

1.1.1. Grants;

1.1.2. Contracts;

1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);

1.1.4. Loans;

1.1.5. Loan Guarantees;

1.1.6. Subsidies;

1.1.7. Insurance;

1.1.8. Food commodities;

1.1.9. Direct appropriations;

1.1.10. Assessed and voluntary contributions; and

1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award *does not* include:

1.1.12. Technical assistance, which provides services in lieu of money;

1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;

1.1.14. Any award classified for security purposes; or

1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. “Contract” means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. “Contractor” means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. “Data Universal Numbering System (DUNS) Number” means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet’s website may be found at: <http://fedgov.dnb.com/webform>.

1.5. “Entity” means all of the following as defined at 2 CFR part 25, subpart C;

1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;

1.5.2. A foreign public entity;

1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
- 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **“Executive”** means an officer, managing partner or any other employee in a management position.
- 1.7. **“Federal Award Identification Number (FAIN)”** means an Award number assigned by a Federal agency to a Prime Recipient.
- 1.8. **“FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109- 282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the “Transparency Act.”
- 1.9. **“Prime Recipient”** means a Colorado State agency or institution of higher education that receives an Award.
- 1.10. **“Subaward”** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient’s support in the performance of all or any portion of the substantive project or program for which the Award was granted.
- 1.11. **“Subrecipient”** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term “Subrecipient” includes and may be referred to as Subgrantee.
- 1.12. **“Subrecipient Parent DUNS Number”** means the subrecipient parent organization’s 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient’s System for Award Management (SAM) profile, if applicable.
- 1.13. **“Supplemental Provisions”** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
- 1.14. **“System for Award Management (SAM)”** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
- 1.15. **“Total Compensation”** means the cash and noncash dollar value earned by an Executive during the Prime Recipient’s or Subrecipient’s preceding fiscal year and includes the following:
- 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
- 1.16. **“Transparency Act”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
- 1.17 **“Vendor”** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 To SAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in SAM.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.


8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.


8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.

EXHIBIT L
SAMPLE SUBRECIPIENT MONITORING AND RISK ASSESSMENT

 CDOT SUBRECIPIENT RISK ASSESSMENT		Date: 		
Name of Entity (Subrecipient):				
Name of Project / Program:				
Estimated Award Period:				
Entity Executive Director or VP:				
Entity Chief Financial Officer:				
Entity Representative for this Self Assessment:				
Instructions: (See "Instructions" tab for more information) 1. Check only one box for each question. All questions are required to be answered. 2. Utilize the "Comment" section below the last question for additional responses. 3. When complete, check the box at the bottom of the form to authorize.		Yes	No	N/A
EXPERIENCE ASSESSMENT		Yes	No	N/A
1	Is your entity new to operating or managing federal funds (has not done so within the past three years)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2	Is this funding program new for your entity (managed for less than three years)? <i>Examples of funding programs include CMAQ, TAP, STP-M, etc.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3	Does your staff assigned to the program have at least three full years of experience with this federal program?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
MONITORING/AUDIT ASSESSMENT		Yes	No	N/A
4	Has your entity had an on-site project or grant review from an external entity (e.g., CDOT, FHWA) within the last three years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5	a) Were there non-compliance issues in this prior review?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) What were the number and extent of issues in prior review?	<input type="checkbox"/> <small>1 to 2</small>	<input type="checkbox"/> <small>>3</small>	<input type="checkbox"/>
OPERATION ASSESSMENT		Yes	No	N/A
6	Does your entity have a time and effort reporting system in place to account for 100% of all employees' time, that can provide a breakdown of the actual time spent on each funded project? <i>If No, in the comment section please explain how you intend to document 100% of hours worked by employees and breakdown of time spent on each funding project.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
FINANCIAL ASSESSMENT		Yes	No	N/A
7	a) Does your entity have an indirect cost rate that is approved and current?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) If Yes, who approved the rate, and what date was it approved?			
8	Is this grant/award 10% or more of your entity's overall funding?	<input type="checkbox"/> <small>>10%</small>	<input type="checkbox"/> <small><10%</small>	<input type="checkbox"/>
9	Has your entity returned lapsed* funds? *Funds "lapse" when they are no longer available for obligation.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10	Has your entity had difficulty meeting local match requirements in the last three years?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
11	What is the total federal funding your entity has been awarded for the last federal fiscal year, and what is your entity's fiscal year end?			

INTERNAL CONTROLS ASSESSMENT		Yes	No	N/A
12	Has your entity had any significant changes in key personnel or accounting system(s) in the last year? (e.g., Controller, Exec Director, Program Mgr, Accounting Mgr, etc.) If Yes, in the comment section, please identify the accounting system(s), and / or list personnel positions and identify any that are vacant.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13	Does your entity have financial procedures and controls in place to accommodate a federal-aid project?	<input type="checkbox"/>	<input type="checkbox"/>	
14	Does your accounting system identify the receipts and expenditures of program funds separately for each award?	<input type="checkbox"/>	<input type="checkbox"/>	
15	Will your accounting system provide for the recording of expenditures for each award by the budget cost categories shown in the approved budget?	<input type="checkbox"/>	<input type="checkbox"/>	
16	Does your agency have a review process for all expenditures that will ensure that all costs are reasonable, allowable and allocated correctly to each funding source? If Yes, in the comment section, please explain your current process for reviewing costs.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
17	How many total FTE perform accounting functions within your organization?	<input type="checkbox"/> ≥ 6	<input type="checkbox"/> 2 to 5	<input type="checkbox"/> < 2
IMPACT ASSESSMENT		Yes	No	N/A
18	For this upcoming federal award or in the immediate future, does your entity have any potential conflicts of interest* in accordance with applicable Federal awarding agency policy? If Yes, please disclose these conflicts in writing, along with supporting information, and submit with this form. (*Any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Subrecipient's obligations to the State.)	<input type="checkbox"/>	<input type="checkbox"/>	
19	For this award, has your entity disclosed to CDOT, in writing, violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the award? Response options: YES = Check if have one or more violation(s) and have either disclosed previously to CDOT or as part of this form. In the comment section, list all violations with names of supporting documentation and submit with this form. NO = Check if have one or more violation(s) and have not disclosed previously or will not disclose as part of this form. Explain in the comment section. N/A = Check if have no violations.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
PROGRAM MANAGEMENT ASSESSMENT		Yes	No	N/A
20	Does your entity have a written process/procedure or certification statement approved by your governing board ensuring critical project personnel are capable of effectively managing Federal-aid projects? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
21	Does your entity have written procurement policies or certification statement for consultant selection approved by your governing board in compliance with 23 CFR 172*? If Yes, please submit with this form. (*The Brooks Act requires agencies to promote open competition by advertising, ranking, selecting, and negotiating contracts based on demonstrated competence and qualifications, at a fair and reasonable price.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
22	a) Is your staff familiar with the relevant CDOT manuals and federal program requirements?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	b) Does your entity have a written policy or a certification statement approved by your governing board assuring federal-aid projects will receive adequate inspections? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	c) Does your entity have a written process or a certification statement approved by your governing board assuring a contractor's work will be completed in conformance with approved plans and specifications? If Yes, please submit with this form.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

d) Does your entity have a written policy or certification statement approved by your governing board assuring that materials installed on the projects are sampled and tested per approved processes. <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
e) Does your entity have a written policy or certification statement approved by your governing board assuring that only US manufactured steel will be incorporated into the project (<i>Buy America requirements</i>)? <i>If Yes, please submit with this form.</i>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<p>Comments - As needed, include the question number and provide comments related to the above questions. Insert additional rows as needed.</p>			
<p><input type="checkbox"/> By checking this box, the Executive Director, VP or Chief Financial Officer of this entity certifies that all information provided on this form is true and correct.</p> <div style="display: flex; justify-content: space-between; align-items: center;">  Tool Version: v2.0 (081816) </div>			

**EXHIBIT M - OMB Uniform Guidance for Federal
Awards Subject to
The Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit
Requirements for Federal Awards (“Uniform Guidance”),
Federal Register, Vol. 78, No. 248, 78590**

The agreement to which these Uniform Guidance Supplemental Provisions are attached has been funded, in whole or in part, with an award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the agreement or any attachments or exhibits incorporated into and made a part of the agreement, the provisions of these Uniform Guidance Supplemental Provisions shall control. In the event of a conflict between the provisions of these Supplemental Provisions and the FFATA Supplemental Provisions, the FFATA Supplemental Provisions shall control.

- 9. Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.
- 9.1. “Award”** means an award by a Recipient to a Subrecipient funded in whole or in part by a Federal Award. The terms and conditions of the Federal Award flow down to the Award unless the terms and conditions of the Federal Award specifically indicate otherwise. 2 CFR §200.38
 - 9.2. “Federal Award”** means an award of Federal financial assistance or a cost-reimbursement contract under the Federal Acquisition Requirements by a Federal Awarding Agency to a Recipient. “Federal Award” also means an agreement setting forth the terms and conditions of the Federal Award. The term does not include payments to a contractor or payments to an individual that is a beneficiary of a Federal program.
 - 9.3. “Federal Awarding Agency”** means a Federal agency providing a Federal Award to a Recipient. 2 CFR §200.37
 - 9.4. “FFATA”** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252.
 - 9.5. “Grant” or “Grant Agreement”** means an agreement setting forth the terms and conditions of an Award. The term does not include an agreement that provides only direct Federal cash assistance to an individual, a subsidy, a loan, a loan guarantee, insurance, or acquires property or services for the direct benefit of use of the Federal Awarding Agency or Recipient. 2 CFR §200.51.
 - 9.6. “OMB”** means the Executive Office of the President, Office of Management and Budget.
 - 9.7. “Recipient”** means a Colorado State department, agency or institution of higher education that receives a Federal Award from a Federal Awarding Agency to carry out an activity under a Federal program. The term does not include Subrecipients. 2 CFR §200.86
 - 9.8. “State”** means the State of Colorado, acting by and through its departments, agencies and institutions of higher education.
 - 9.9. “Subrecipient”** means a non-Federal entity receiving an Award from a Recipient to carry out part of a Federal program. The term does not include an individual who is a beneficiary of such program.
 - 9.10. “Uniform Guidance”** means the Office of Management and Budget Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, which supersedes requirements from OMB Circulars A-21, A-87, A-110, and A-122, OMB Circulars A-89, A-102, and A- 133, and the guidance in Circular A-50 on Single Audit Act follow-up. The terms and conditions of the Uniform Guidance flow down to Awards to Subrecipients unless the Uniform Guidance or the terms and conditions of the Federal Award specifically indicate otherwise.
 - 9.11. “Uniform Guidance Supplemental Provisions”** means these Supplemental Provisions for Federal Awards subject to the OMB Uniform Guidance, as may be revised pursuant to ongoing guidance from relevant Federal agencies or the Colorado State Controller.
- 10. Compliance.** Subrecipient shall comply with all applicable provisions of the Uniform Guidance, including but not limited to these Uniform Guidance Supplemental Provisions. Any revisions to such provisions

automatically shall become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Subrecipient of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.

11. Procurement Standards.

- 3.1 Procurement Procedures.** Subrecipient shall use its own documented procurement procedures which reflect applicable State, local, and Tribal laws and regulations, provided that the procurements conform to applicable Federal law and the standards identified in the Uniform Guidance, including without limitation, §§200.318 through 200.326 thereof.
- 3.2 Procurement of Recovered Materials.** If Subrecipient is a State Agency or an agency of a political subdivision of a state, its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- 4. Access to Records.** Subrecipient shall permit Recipient and auditors to have access to Subrecipient's records and financial statements as necessary for Recipient to meet the requirements of §200.331 (Requirements for pass-through entities), §§200.300 (Statutory and national policy requirements) through 200.309 (Period of performance), and Subpart F-Audit Requirements of the Uniform Guidance. 2 CFR §200.331(a)(5).
- 5. Single Audit Requirements.** If Subrecipient expends \$750,000 or more in Federal Awards during Subrecipient's fiscal year, Subrecipient shall procure or arrange for a single or program-specific audit conducted for that year in accordance with the provisions of Subpart F-Audit Requirements of the Uniform Guidance, issued pursuant to the Single Audit Act Amendments of 1996, (31 U.S.C. 7501-7507). 2 CFR §200.501.
 - 5.1 Election.** Subrecipient shall have a single audit conducted in accordance with Uniform Guidance §200.514 (Scope of audit), except when it elects to have a program-specific audit conducted in accordance with §200.507 (Program-specific audits). Subrecipient may elect to have a program-specific audit if Subrecipient expends Federal Awards under only one Federal program (excluding research and development) and the Federal program's statutes, regulations, or the terms and conditions of the Federal award do not require a financial statement audit of Recipient. A program-specific audit may not be elected for research and development unless all of the Federal Awards expended were received from Recipient and Recipient approves in advance a program-specific audit.
 - 5.2 Exemption.** If Subrecipient expends less than \$750,000 in Federal Awards during its fiscal year, Subrecipient shall be exempt from Federal audit requirements for that year, except as noted in 2 CFR §200.503 (Relation to other audit requirements), but records shall be available for review or audit by appropriate officials of the Federal agency, the State, and the Government Accountability Office.
 - 5.3 Subrecipient Compliance Responsibility.** Subrecipient shall procure or otherwise arrange for the audit required by Part F of the Uniform Guidance and ensure it is properly performed and submitted when due in accordance with the Uniform Guidance. Subrecipient shall prepare appropriate financial statements, including the schedule of expenditures of Federal awards in accordance with Uniform Guidance §200.510 (Financial statements) and provide the auditor with access to personnel, accounts, books, records, supporting documentation, and other information as needed for the auditor to perform the audit required by Uniform Guidance Part F-Audit Requirements.
- 6. Contract Provisions for Subrecipient Contracts.** Subrecipient shall comply with and shall include all of the following applicable provisions in all subcontracts entered into by it pursuant to this Grant Agreement.

6.1 Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of “federally assisted construction contract” in 41 CFR Part 60-1.3 shall include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, “Equal Employment Opportunity” (30 FR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and implementing regulations at 41 CFR part 60, “Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor.”

“During the performance of this contract, the contractor agrees as follows:

(1) The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, or national origin. The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, or national origin. Such action shall include, but not be limited to the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the contracting officer setting forth the provisions of this nondiscrimination clause.

(2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, or national origin.

(3) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided by the agency contracting officer, advising the labor union or workers' representative of the contractor's commitments under section 202 of Executive Order 11246 of September 24, 1965, and shall post copies of the notice in conspicuous places available to employees and applicants foremployment.

(4) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.

(5) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the contracting agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

(6) In the event of the contractor's non-compliance with the nondiscrimination clauses of this contract or with any of such rules, regulations, or orders, this contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

(7) The contractor will include the provisions of paragraphs (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as may be directed by the Secretary of Labor as a means of enforcing such provisions including sanctions for noncompliance: *Provided, however,* that in the event the contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction, the contractor may request the United States to enter into such litigation to protect the interests of the United States.”

4.2 Davis-Bacon Act. Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of \$2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-

3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or Subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled.

The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

4.3 Rights to Inventions Made Under a Contract or Agreement. If the Federal Award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and Subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," Subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

4.4 Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended. Contracts and subgrants of amounts in excess of \$150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401-7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

4.5 Debarment and Suspension (Executive Orders 12549 and 12689). A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

4.6 Byrd Anti-Lobbying Amendment (31 U.S.C. 1352). Contractors that apply or bid for an award exceeding \$100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

7. Certifications. Unless prohibited by Federal statutes or regulations, Recipient may require Subrecipient to submit certifications and representations required by Federal statutes or regulations on an annual basis. 2 CFR §200.208. Submission may be required more frequently if Subrecipient fails to meet a requirement of the Federal award. Subrecipient shall certify in writing to the State at the end of the Award that the project or activity was completed or the level of effort was expended. 2 CFR §200.201(3). If the required level of activity or effort was not carried out, the amount of the Award must be adjusted.

1.8.Event of Default. Failure to comply with these Uniform Guidance Supplemental Provisions shall constitute an event of default under the Grant Agreement (2 CFR §200.339) and the State may terminate the Grant upon 30

days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Grant, at law or in equity.

9. **Effective Date.** The effective date of the Uniform Guidance is December 26, 2013. 2 CFR §200.110. The procurement standards set forth in Uniform Guidance §§200.317-200.326 are applicable to new Awards made by Recipient as of December 26, 2015. The standards set forth in Uniform Guidance Subpart F-Audit Requirements are applicable to audits of fiscal years beginning on or after December 26, 2014.

10. **Performance Measurement**

The Uniform Guidance requires completion of OMB-approved standard information collection forms (the PPR). The form focuses on outcomes, as related to the Federal Award Performance Goals that awarding Federal agencies are required to detail in the Awards.

Section 200.301 provides guidance to Federal agencies to measure performance in a way that will help the Federal awarding agency and other non-Federal entities to improve program outcomes.

The Federal awarding agency is required to provide recipients with clear performance goals, indicators, and milestones (200.210). Also, must require the recipient to relate financial data to performance accomplishments of the Federal award.

RESOLUTION NO. R2021-_____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO,
APPROVING THE INTERGOVERNMENTAL AGREEMENT BETWEEN THE CITY OF
AURORA AND THE COLORADO DEPARTMENT OF TRANSPORTATION (CDOT) FOR
HAVANA STREET TRANSIT IMPROVEMENTS

WHEREAS, the City of Aurora, Colorado (the “City”), and the State of Colorado Department of Transportation (“CDOT”), collectively “the Parties”, as government agencies, are authorized by the provisions of Colo. Const., art. XIV, § 18(2)(a) and C.R.S. §§ 29-1-201, et seq., to contract with one another to provide any function, service or facility lawfully authorized to each; and

WHEREAS, the City applied for and was awarded a federal grant through the DRCOG 2020-2023 Transportation Improvement Program Arapahoe County Subregional Forum for the Havana Street Transit Improvements Project in 2019; and

WHEREAS, the City was awarded \$539,580 in federal funding and is contributing a \$117,420 local City match as well as a \$125,000 match from RTD; and

WHEREAS, the City and CDOT desire to enter into an intergovernmental agreement to administer the federal funding for the construction phase of this project; and

WHEREAS, the Havana Street corridor is one of the seven transit priority corridors identified by RTD for improvements and the implementation of this project will help to achieve a variety of Metro Vision objectives and address key TIP Focused Areas endorsed by the DRCOG Board; and

WHEREAS, Section 10-12 of the City Charter authorizes City Council to approve, by resolution, the execution of contracts, and amendments thereto, with other governmental units for furnishing or receiving commodities or services; and

WHEREAS, the City Council of the City of Aurora finds and determines that it is in the best interests of the City and its citizens to authorize the execution of this Agreement.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The Resolution Approving the Intergovernmental Agreement between the City and CDOT for Havana Street Transit Improvements is hereby approved.

Section 2. The Mayor and the City Clerk are hereby authorized to execute and deliver the Intergovernmental Agreement on behalf of the City in substantially the form presented at this meeting, with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 3. All resolutions or parts of resolutions of the City in conflict herewith are hereby rescinded.

RESOLVED AND PASSED this ____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

Michelle Gardner

MICHELLE GARDNER, Sr. Assistant City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: Arapahoe County Open Spaces Sales and Use Tax
Item Initiator: Luke Palmisano, Intergovernmental Relations Manager
Staff Source/Legal Source: Luke Palmisano, Intergovernmental Relations Manager/Rachel Allen, Client Group Manager
Outside Speaker: Chris Henning, Arapahoe County Communications Manager
Council Goal: 2012: 2.0--Serve as leaders and partners with other governments and jurisdictions

COUNCIL MEETING DATES:

Study Session: 8/2/2021

Regular Meeting: N/A

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
Why is a waiver needed?

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Federal, State & Intergovernmental Relations

Policy Committee Date: 7/23/2021

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

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

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

The Arapahoe County Open Space sales and use tax was approved by voters in November 2003 and reauthorized in 2011. Currently this .25 % tax is effective through December 21, 2023 for the purpose of preserving Open Space in Arapahoe County.

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

The Arapahoe County Open Spaces Sales and Use Tax will sunset in 2023 and the Board of County Commissioners is expected to refer the referendum to the ballot this November. As part of that process, Arapahoe County representatives will present the tax history, benefits to Aurora and answer any questions that the mayor and council may have.

The Arapahoe County Open Space Tax represents a significant percentage of the Parks, Recreation and Open Space Department’s annual capital and operating budgets.

The sales and use tax dedicates \$0.25 of every \$100 dollars spent in Arapahoe County (excluding purchase of food or prescription drugs) toward the County’s Open Spaces programs. Half of the revenue from the existing tax is given back to the cities and towns in the County as “Shareback.” Aurora receives approximately \$10 million annually and \$110.6 million since the program began. Tax proceeds fund capital projects, acquisition, programs and maintenance of parks, trails, and open spaces.

An additional 12% is set aside for competitive grants for which Aurora PROS Department is eligible. PROS has received \$9.4 million from the Open Spaces Grant program, including two recent grant awards for improvements at Peoria Hills and Fulton Parks.

QUESTIONS FOR COUNCIL

Does the FSIR Committee wish to forward this item to full Council for discussion?

LEGAL COMMENTS

City Council may levy and collect taxes for municipal purposes, subject to the right of referendum as provided in the Charter. (Charter Section 10-11). Pursuant to the city’s home rule authority granted to the City of Aurora under Article XX Section 6 (g) of the Colorado Constitution, the City has the power of taxation for local municipal purposes. City Council shall act only by ordinance, resolution or motion. All legislative enactments must be in the form of an ordinance; all actions, except as herein provided, may be in the form of Resolutions or motions. (Charter Section 5-1). (Allen)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: The Arapahoe County Parks Tax is a significant revenue source for PROS. See attached presentation for details.

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain:

Open Space Sales & Use Tax Reauthorization

City of Aurora
Federal, State and Intergovernmental
Relations Policy Committee
July 23, 2021

OPEN SPACES OVERVIEW

What we do:

Open Spaces works to:

- Build and maintain trails
- Enhance neighborhood and regional parks
- Preserve natural and heritage areas

Since 2003:

- 70 miles of trails built or improved
- 168 park, trailhead, heritage-area projects supported
- 31,000 acres of open space conserved



Lifelong Program Impact

2004-2020 Total Percentage Grants, Joint Projects, Shareback

Total Open Space Sales Tax Revenue: 2004-2020 \$359,702,774

Total Funds Awarded to External Agencies 2004-2020:

Shareback \$177,542,757

Grants \$43,811,330

Joint Projects \$35,418,136

Total Awarded 2004-2020: \$256,772,223

**Percentage of Revenue Given Directly Back to Municipal and
Special District Partners:**

71%

Funds Benefiting Your Community

City of Aurora (2004-2020)

\$7,154,352	Grants
\$7,440,365	Joint Projects
\$102,262,796	Shareback
<u>\$50,000</u>	Special District Projects
\$116,907,513	Total

Funds Benefiting Your Community

Grant Project Example: Tollgate Crossing Neighborhood Park



Funds Benefiting Your Community

Joint Project Example:

Buckley Air Force Base Compatible Use Buffer



Reauthorization Process Underway

- Tax set to expire in 2023 (voter-approved in 2003, renewed in 2011)
- Public input collected over past year through County's recent Master Plan update, stakeholder outreach, and polling
- Open Space and Trails Advisory Board engagement
- Established a reauthorization committee to assess options for Board of County Commissioners consideration and decision-making
- Ongoing education and program awareness
- Special meetings to city councils/boards highlighting impact of tax
- Board of County Commissioners will decide in August whether to refer a November ballot measure

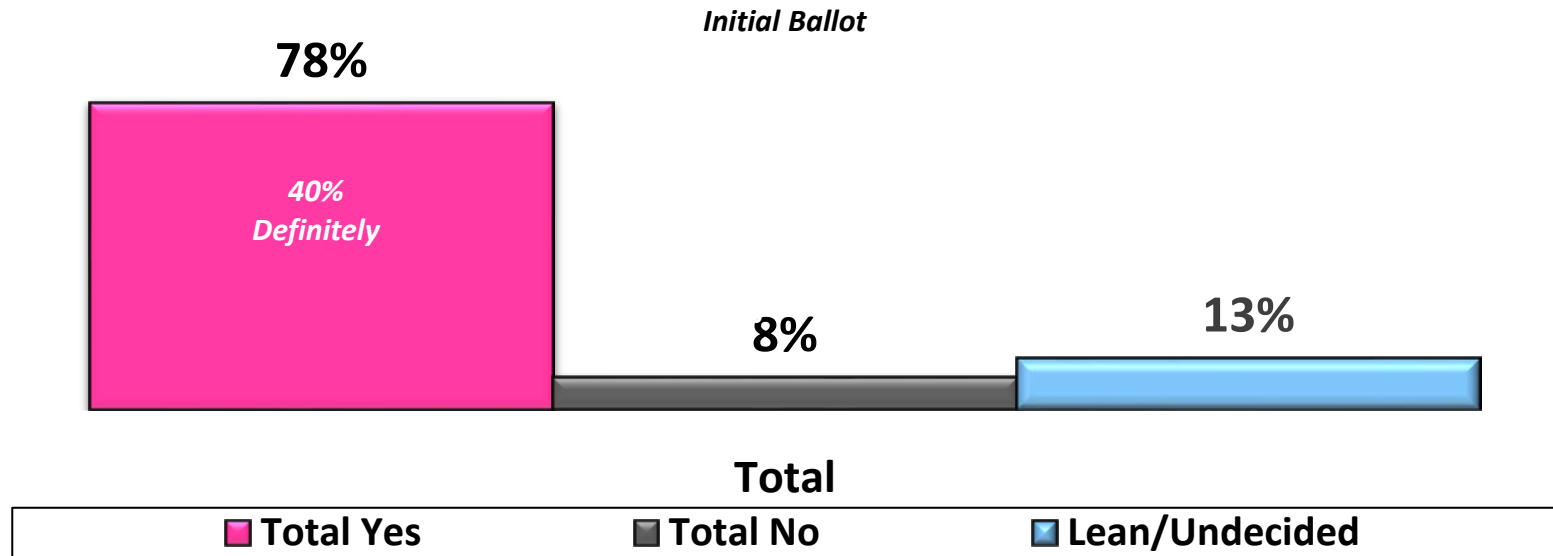
Proposed Proposal Under Consideration

- No change to Municipal Shareback formula
- No change to Grant Program formula or eligibility
- Recommend making tax permanent
- Recommend increasing funding for maintaining existing assets (county/city level)
- Recommend referring a measure to 2021 November ballot to steward, maintain and improve our Open Spaces network

May 2021 Community Polling

N=414 registered voters

More than three-quarters initially would vote “Yes” on the ballot issue.



*There could be a proposal that county voters could be asked to consider this November –
Please indicate if the election were being held today and this proposal was on the ballot, would you vote YES or NO on the following question...*

Supporting voters value open space in the county and want to see it maintained and improved for future generations.

Reason
I generally support parks and open space
Maintenance is important for future generations
I love and use the outdoors
It's a good use of taxpayer funds
It's good for the health and beauty of our county
It's a minimal tax increase for the benefit
We need to protect wildlife
Improves the quality of life for all citizens

"I value open space and I think sales tax is a good way to go about it. I also like that it includes parks and maintaining historic buildings."

Female, 18-34, DEM

"Open space and recreation are vital to the community and mental health."

Female, 65+, DEM

"As population grow, people need more than roads and sidewalks for quality of life."

Male, 65+, REP

What are the one or two main reasons why you would vote yes on this proposal?

Next Steps/Timeline

Welcome any questions, input and feedback.

The Board of County Commissioners will decide in August whether to refer an open spaces reauthorization measure to this year's ballot.

Thank you for your continued support and partnership.

Arapahoe County Open Space



Tax Shareback Funded Projects



City of Aurora Parks, Recreation and Open Space Department

Aurora Reservoir Playground



Playground



Playground Shade Shelter



Aurora Sports Park Synthetic Fields



All Weather Playing Field



Aerial View



Del Mar Park Renovation



Playground



Picnic Shelter



Expo Tennis and Basketball Courts



Tennis and Basketball Courts



Basketball Court



Tennis Courts



Larkspur Park



Playground



Climbing Boulder



Horseshoe Pits



Meadowood Tennis and Basketball Courts



Lighted Tennis Courts



Lighted Basketball Courts



Tennis and Basketball Courts



Mission Viejo Playground Renovation



Playground Slide



Planet Markers



Playground Climber



Olympic Ballfield Lighting



New LED Lights



Night Time View



Red-tailed Hawk Park Inclusive Playground



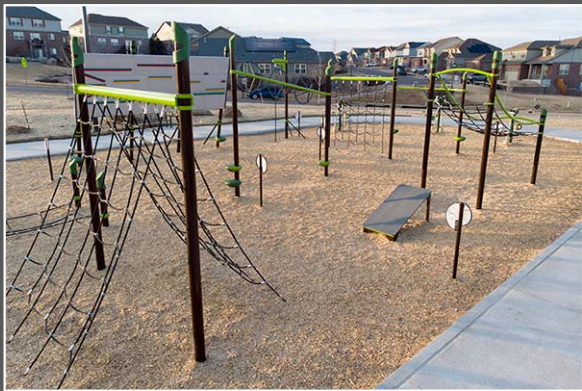
Accessible Swing



Zipline



Tollgate Crossing Neighborhood Park



Adult Fitness Area



Embankment Play



The Park



Triple Creek Trailhead



Entry and Parking Lot



Parking Lots and Horse Hitches



Signage



Wagon Trail Park



Playground



Climbing Wagon



The Park



PROS Employee Impact

- 32 PROS FTE Salaries
- 36 PROS Seasonal Staff Salaries





CITY OF AURORA

Council Agenda Commentary

Item Title: Resolution to Enter Lease-Purchase Agreement for Software Renewal
Item Initiator: Scott Newman, Chief Information Officer
Staff Source/Legal Source: Scott Newman, Chief Information Officer/Hans Hernandez, Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

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

Why is a waiver needed? To provide sufficient time to execute the agreement in advance of the contract renewal, the Information Technology department is requesting a waiver of reconsideration.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Management & Finance

Policy Committee Date: 7/27/2021

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

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

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

This item was reviewed by the Management and Finance Policy Committee on 07/27/2021. The committee approved advancing this item to Study Session for further discussion and approval.

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

The Information Technology department has an annual requirement to renew software licenses for the VMWare virtual server environment. This technology is required to run over 95% of the servers in use at the City. New licenses have been added over the years, resulting in multiple license renewals each calendar year, with an escalating annual cost. By entering a lease-purchase agreement, the Information Technology department can consolidate the renewals into a single renewal, and lock in the annual cost for the next 3 years. This will save the City over \$200,000 over the 3 year term. The proposed lease-purchase agreement requires an ordinance or resolution authorizing this agreement. Therefore, the Information Technology department is requesting Council approve entering the lease agreement through a formal resolution.

QUESTIONS FOR COUNCIL

Does Council wish to approve and forward this item to the August 23rd, 2021 City Council meeting?

LEGAL COMMENTS

The City is authorized pursuant to §31-15-801, C.R.S., as amended, the City's home rule powers, and Section 2-683 of the City Code to enter into long-term or short-term rental or leasehold agreements in order to provide necessary land, buildings, equipment, and other property for governmental or proprietary purposes, which agreements may include an option to purchase and acquire title to such leased or rented property. (Hernandez)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: The annual license renewal is budgeted in the General Fund, Servers and Systems 37020.

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: N/A

DOCUMENTATION INSTRUCTIONS FOR LEASE NUMBER 500-50294217

The instructions listed below should be followed when completing the enclosed documentation. Documentation completed improperly will delay funding. If you have any questions regarding the instructions or the documentation, please call us.

EXCEPT AS NOTED, ALL SIGNATURES MUST BE BY THE PERSON OR PERSONS AUTHORIZED IN LESSEE'S RESOLUTION.

I. LEASE PURCHASE AGREEMENT

a. Terms and Conditions

- Print name, title, sign and date
- Another authorized officer must attest the signature – must be signed by other than lease signor

b. Tax Designation and Covenants – The purpose of this document is to determine if the Tax-Exempt Lease Purchase Agreement meets the requirements for “Bank Qualification” under Section 265(b)(3)(B) of the Internal Revenue Code. How the Lessee answers the questions will not impact the current transaction; however, it does allow for proper categorization of the obligation and accurate reporting to the Internal Revenue Service.

- Initial as appropriate

c. Opinion of Counsel

- Lessee's legal counsel must sign, date and type in their name, the name of the firm, address and telephone number.

II. EXHIBIT A – PAYMENT SCHEDULE

- Print name, title, sign and date

III. EXHIBIT B – EQUIPMENT DESCRIPTION — (WHEN PROVIDED)

- Print name, title, sign and date

IV. INCUMBENCY CERTIFICATE

To be signed by a person other than the person who signed the agreement and related Documents.

V. STATE SPECIFIC ADDENDA – Required for: AR, AZ, CO, FL, GA, KS, LA, MI, MN, MS, NC, NJ, NY, OH, OK, and TX.

- Print name, title, sign and date. Attest where required

VI. ACCEPTANCE CERTIFICATE – PLEASE RETAIN UNTIL ALL EQUIPMENT HAS BEEN RECEIVED AND IS IN FULL WORKING ORDER

- Print name, title, sign and date

VII. 8038 - IRS FORM

The enclosed form is a SAMPLE only. The actual 8038G or GC will be completed and sent to you for your signature after closing, with instructions to return the original to us at your earliest convenience. This is being done in accordance with the Internal Revenue Service regulations and is a requirement of this financing.

VIII. ADDITIONAL DOCUMENTATION THAT MUST BE SENT PRIOR TO FUNDING — (WHEN APPLICABLE) :

- Resolution** of governing body approving the purchase of the equipment and the resolution ratifying the financing. (Note: If the purchase resolution and financing were done in one resolution that is sufficient.)
- Vendor invoice** listing customer as both bill to and ship to party (to be provided by vendor)
- Advance payment check** made payable to DEL AGE LANDEN PUBLIC FINANCE LLC
- Completed Billing Information form**
- State sales tax exemption certificate**
- Original documents**
- Escrow Agreement** – Return signed Escrow Agreement Incumbency Certificate & Lessee W9
- MUNICIPAL AUTHORIZATION
- _____

ALL DOCUMENTATION SHOULD BE RETURNED TO:

Lease Processing Center, 1111 Old Eagle School Road, Wayne, PA 19087 • 800-736-0220

Attn: JOY WILLIAMS

Email: JWILLIAMS@LEASEDIRECT.COM

DEL AGE LANDEN PUBLIC FINANCE LLC

- Check here if your billing or Equipment Location has changed or is incorrect.
Please note changes on the reverses side.
Payment sent without a copy of this invoice may be subject to a delay in processing.

INVOICE #: FIRST PAYMENT
 REFERENCE #: 500-50294217
 CUSTOMER #: AURORA
 DUE DATE: 8/27/21
 TOTAL DUE: \$183,737.97

- Please do not send correspondence to this address.
- **Send payment for this Invoice to:**
 DEL AGE LANDEN PUBLIC FINANCE LLC
 REF# 500-50294217
 1111 OLD EAGLE SCHOOL ROAD
 WAYNE, PA 19087

- **All future payments must be paid to the following Lockbox:**
 DEL AGE LANDEN PUBLIC FINANCE LLC
 LOCKBOX PO BOX 41602
 PHILADELPHIA, PA 19101

INVOICE DATE	INVOICE #	REFERENCE #	CUSTOMER
7/27/21	FIRST PAYMENT	500-50294217	AURORA
P.O. NUMBER		EQUIPMENT DESCRIPTION	
		SEE BELOW	
EQUIPMENT LOCATION			

INVOICE

CUSTOMER SERVICE 800-935-9439

EQUIPMENT DESCRIPTION	DUE DATE	PAYMENT AMOUNT
FORST PAYMENT DUE ON LEASE # 500-50294217	8/27/21	\$183,737.97
TOTAL		\$183,737.97

FOR PROPER CREDIT, PLEASE SUBMIT A COPY OF THIS INVOICE WITH PAYMENT.

De Lage Landen Public Finance LLC

1111 Old Eagle School Rd
Wayne, PA 19087

Lease Purchase Agreement

DATED: JULY 14, 20 21

LESSEE	Full Legal Name City Of Aurora	Phone Number 303-739-7000
	DBA Name (if any)	
Billing Address 15151 E ALAMEDA PKWY		City AURORA
		State CO
		Zip 80012

PROPERTY DESCRIPTION	Quantity	Model No. (if applicable)	Serial Number (if applicable)	General Description (describe equipment, software, maintenance, warranty, service and similar items being financed):
				SEE QUOTE # Q-04716 DATED 7/10/21
Location of Property (include the location of any tangible personal property financed and/or the location of any tangible personal property that will be using intangible property):				

VENDOR	Vendor Name SANITY SOLUTIONS	RENTAL PAYMENTS	Rental Payment Periods:	Rental Payments shall be made in accordance with Section 4.01 and the Schedule of Rental Payments attached hereto as Exhibit A.
	Address		<input type="checkbox"/> Monthly	
	City		<input type="checkbox"/> Quarterly	
	State		<input type="checkbox"/> Semiannually	
	Zip		<input checked="" type="checkbox"/> Annually	

TERMS & CONDITIONS

THE TERMS AND CONDITIONS OF THIS AGREEMENT SET FORTH ON PAGES TWO THROUGH FIVE, INCLUDING ANY EXHIBITS ATTACHED HERETO, SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF SET FORTH HERE.

LESSOR	Lessor DE LAGE LANDEN PUBLIC FINANCE LLC
	Signature
	Title
	Lease Number

LESSEE SIGNATURE	Lessee City Of Aurora
	Signature
	Title
	(Seal)
	Attest
	Title

(Terms and Conditions continued on the reverse side of this Agreement.)

TAX DESIGNATIONS AND COVENANTS

Bank Qualification: Lessee initial here if this provision is applicable: _____
If not initialed, this provision does NOT apply to this Agreement.

(a) Lessee hereby designates this Agreement as a "qualified tax-exempt obligation" as defined in Section 265(b)(3)(B) of the Code. The aggregate face amount of all tax-exempt obligations (excluding private activity bonds other than qualified 501(c)(3) bonds) issued or to be issued by Lessee and all subordinate entities thereof during the calendar year during which the Commencement Date of this Agreement occurs, including this Agreement, is not reasonably expected to exceed \$10,000,000.

(b) Lessee hereby covenants that Lessee and all subordinate entities thereof will not issue in excess of \$10,000,000 of "qualified tax-exempt obligations" (including this Agreement but excluding private activity bonds other than qualified 501(c)(3) bonds) during the calendar year during which the Commencement Date of this Agreement occurs without first obtaining an opinion of nationally recognized counsel in the area of tax-exempt obligations of state and local governments acceptable to Lessor that the designation of this Agreement as a "qualified tax-exempt obligation" will not be adversely affected.

OPINION OF COUNSEL	As legal counsel of Lessee, I have examined (a) the Agreement, which, among other things provides for the sale to and purchase by the Lessee of the Property, (b) an executed counterpart of the ordinance or resolution of Lessee which, among other things, authorizes Lessee to execute the Agreement and (c) such other opinions, documents and matters of law as I have deemed necessary in connection with the following opinions. Based on the foregoing, I am of the following opinions: (1) Lessee is a public body corporate and politic, duly organized and existing under the laws of the State, and has a substantial amount of one or more of the following sovereign powers: (a) the power to tax, (b) the power of eminent domain, and (c) police power; (2) Lessee has the requisite power and authority to purchase the Property and to execute and deliver the Agreement and to perform its obligations under the Agreement; (3) the Agreement and the other documents either attached thereto or required therein have been duly authorized, approved and executed by and on behalf of Lessee, and the Agreement is a valid and binding obligation of Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditor's rights generally; (4) the authorization, approval and execution of the Agreement and all other proceedings of Lessee relating to the transactions contemplated thereby have been performed in accordance with all open meeting laws, public bidding laws and all other applicable state and federal laws; and (5) there is no proceeding pending or threatened in any court or before any governmental authority or arbitration board or tribunal that, if adversely determined, would adversely affect the transactions contemplated by the Agreement. All capitalized terms herein shall have the same meanings as in the Agreement. Lessor, its successors and assigns, and any counsel rendering an opinion on the tax-exempt status of the interest components of Rental Payments are entitled to rely on this opinion.			
	Signature	Date		
	Name	Phone Number		
	Address	City	State	Zip

ARTICLE I

Section 1.01. Definitions. The following terms will have the meanings indicated below unless the context clearly requires otherwise:

"Agreement" means this Lease Purchase Agreement and any other schedule, exhibit or escrow agreement made a part hereof by the parties hereto, together with any amendments to the Agreement.

"Capital Expenditures" means costs of a type that are properly chargeable to a capital account under general federal income tax principles in effect at the time the cost is paid, or would be so chargeable with a proper election or with the placed-in-service date considered to be the date on which, based on all facts and circumstances, (a) the facility has reached a degree of completion that would permit its operation at substantially its design level and (b) the facility is, in fact, in operation at such level.

"Code" means the Internal Revenue Code of 1986, as amended.

"Commencement Date" is the date when the term of this Agreement and Lessee's obligation to pay rent commence, which date shall be the earlier of (i) the date on which the Property is accepted by Lessee in the manner described in Section 5.01, or (ii) the date on which sufficient moneys to purchase the Property are deposited by Lessor for that purpose with an escrow agent.

"Event of Default" means an Event of Default described in Section 12.01.

"Issuance Year" is the calendar year in which the Commencement Date occurs.

"Lease Term" means the Original Term and all Renewal Terms, but ending on the occurrence of the earliest event specified in Section 3.02.

"Lessee" means the entity described as such on the front of this Agreement, its successors and its assigns.

"Lessor" means the entity described as such on the front of this Agreement, its successors and its assigns.

"Maximum Lease Term" means the Original Term and all Renewal Terms through the Renewal Term including the last Rental Payment date set forth on the Payment Schedule.

"Net Proceeds" means the amount remaining from the gross proceeds of any insurance claim or condemnation award after deducting all expenses (including attorneys' fees) incurred in the collection of such claim or award.

"Original Term" means the period from the Commencement Date until the end of the fiscal year of Lessee in effect at the Commencement Date.

"Payment Schedule" means the schedule of Rental Payments and Purchase Price set forth on Exhibit A.

"Property" means the equipment, software, maintenance, warranty, service and similar items being financed by this Agreement as described on the front of this Agreement, and all replacements, substitutions, updates, upgrades, repairs, restorations, modifications, attachments, accessions, additions and improvements thereof or thereto, as applicable.

"Purchase Price" means the amount set forth on the Payment Schedule as the Purchase Price for the Property.

"Renewal Terms" means the optional renewal terms of this Agreement, each having a duration of one year and a term co extensive with Lessee's fiscal year.

"Rental Payment Period" means the period beginning on the day a Rental Payment is due and ending the day before the next Rental Payment is due. The first Rental Payment Period shall begin on the Commencement Date in all cases. If Rental Payment Periods are monthly, subsequent Rental Payment Periods shall begin on the same day of each month after the Commencement Date. If Rental Payment Periods are quarterly, subsequent Rental Payment Periods shall begin on the same day of each third month after the Commencement Date. If Rental Payment Periods are semiannual, subsequent Rental Payment Periods shall begin on the same day of each sixth month after the Commencement Date. If Rental Payment Periods are annual, subsequent Rental Payment Periods shall begin on the anniversary of the Commencement Date in each year. If the Commencement Date is the 29th, 30th, or 31st day of a month, any subsequent Rental Payment Period that would otherwise begin on the 29th, 30th or 31st of a month that does not include such a date shall begin on the last day of the month.

"Rental Payments" means the basic rental payments payable by Lessee pursuant to Section 4.01.

"State" means the state in which Lessee is located.

"Vendor" means the manufacturer or supplier of the Property as well as the agents or dealers of the manufacturer or supplier of the Property, as listed on the front of this Agreement.

ARTICLE II

Section 2.01. Representations and Covenants of Lessee. Lessee represents, warrants and covenants for the benefit of Lessor as follows:

(a) Lessee is a municipal corporation and political subdivision duly organized and existing under the constitution and laws of the State. Lessee will do or cause to be done all things to preserve and keep in full force and effect its existence as a body corporate and politic. Lessee is a political subdivision of the State within the meaning of Section 103(a) of the Code or a constituted authority authorized to issue obligations on behalf of a state or local governmental unit within the meaning of the regulations promulgated pursuant to said Section of the Code.

(b) Lessee is authorized under the constitution and laws of the State to enter into this Agreement and the transaction contemplated hereby and to perform all of its obligations hereunder.

(c) Lessee has been duly authorized to execute and deliver this Agreement by proper action and approval of its governing body at a meeting duly called, regularly convened and attended throughout by a requisite majority of the members thereof or by other appropriate official approval.

(d) This Agreement constitutes the legal, valid and binding obligation of the Lessee enforceable in accordance with its terms, except to the extent limited by applicable bankruptcy, insolvency, reorganization or other laws affecting creditors' rights generally.

(e) No event or condition that constitutes, or with the giving of notice or the lapse of time or both would constitute, an Event of Default exists at the Commencement Date.

(f) Lessee has, in accordance with the requirements of law, fully budgeted and appropriated sufficient funds for the current fiscal year to make the Rental Payments scheduled to come due during the Original Term and to meet its other obligations for the Original Term, and such funds have not been expended for other purposes.

(g) Lessee will do or cause to be done all things necessary to preserve and keep in full force and effect its existence as a body corporate and politic.

(h) Lessee has complied with such public bidding requirements as may be applicable to this Agreement and the acquisition by Lessee of the Property hereunder.

(i) There is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any court, public board or body, pending or threatened against or affecting the Lessee, or to the best knowledge of the Lessee is there any basis therefor, wherein an unfavorable decision, ruling or finding

would materially adversely affect the transactions contemplated by this Agreement or any other document, agreement or certificate which is used or contemplated for use in the consummation of the transactions contemplated by this Agreement or materially adversely affect the financial condition or properties of Lessee.

(j) All authorizations, consents and approvals of governmental bodies or agencies required in connection with the execution and delivery by the Lessee of this Agreement or in connection with the carrying out by the Lessee of its obligations hereunder have been obtained.

(k) The entering into and performance of this Agreement or any other document or agreement contemplated hereby to which the Lessee is or is to be a party will not violate any judgment, order, law or regulation applicable to the Lessee or result in any breach of, or constitute a default under, or result in the creation of any lien, charge, security interest of other encumbrance on any assets of the Lessee or the Property pursuant to any indenture, mortgage, deed of trust, bank loan or credit agreement or other instrument to which the Lessee is a party or by which it or its assets may be bound, except as herein provided.

(l) The Property is essential to the function of the Lessee or to the service Lessee provides to its citizens. The Lessee has an immediate need for, and expects to make immediate use of, substantially all the Property, which need is not temporary or expected to diminish in the foreseeable future. The Property will be used by Lessee only for the purpose of performing one or more of Lessee's governmental or proprietary functions consistent with the permissible scope of Lessee's authority and will not be used in the trade or business of any other entity or person.

(m) Lessee will comply with all applicable provisions of the Code, including without limitation Sections 103 and 148 thereof, and the applicable regulations of the United States Treasury Department to maintain the exclusion of the interest components of Rental Payments from gross income for purposes of federal income taxation.

(n) Lessee has never failed to appropriate or otherwise make available funds sufficient to pay rental or other payments coming due under any lease purchase, installment sale or other similar agreement.

(o) All the costs of acquiring the Property, including amounts attributable to the financing of software, maintenance, warranty and similar items, are consistently treated as Capital Expenditures by the Lessee on its books and records. All proceeds of this Agreement will be used, directly or indirectly, to finance Capital Expenditures or, to the extent permitted by law, de minimis expenditures for certain specified purposes.

(p) Lessee has received written assurance from Vendor that with respect to the portion of the Property being prepaid, the same maintenance, repair, extended warranty, updates or maintenance or support services, as applicable, are regularly provided to nongovernmental persons on the same terms.

Section 2.02. Certification as to Arbitrage. Lessee hereby represents as follows:

(a) The estimated total costs of the Property will not be less than the total principal portion of the Rental Payments.

(b) The Property has been ordered or is expected to be ordered within six months of the Commencement Date, and the Property is expected to be delivered and installed, and the Vendor fully paid, within one year of the Commencement Date.

(c) Lessee has not created or established, and does not expect to create or establish, any sinking fund or other similar fund (i) that is reasonably expected to be used to pay the Rental Payments, or (ii) that may be used solely to prevent a default in the payment of the Rental Payments.

(d) The Property has not been and is not expected to be sold or otherwise disposed of by Lessee, either in whole or in major part, prior to the last maturity of the Rental Payments.

(e) To the best of our knowledge, information and belief, the above expectations are reasonable.

ARTICLE III

Section 3.01. Lease of Property. Lessor hereby demises, leases and lets the Property to Lessee, and Lessee rents, leases and hires the Property from Lessor, in accordance with the provisions of this Agreement, for the Lease Term. The Original Term of this Agreement shall commence on the Commencement Date and shall terminate on the last day of Lessee's current fiscal year. The Lease Term may be continued at the end of the Original Term or any Renewal Term for an additional Renewal Term up to the Maximum Lease Term; provided, however, that at the end of the Original Term and at the end of each Renewal Term until the Maximum Lease Term has been completed, Lessee shall be deemed to have continued this Agreement for the next Renewal Term unless Lessee shall have terminated this Agreement pursuant to Section 3.04 or Section 10.01. The terms and conditions during any Renewal Term shall be the same as the terms and conditions during the Original Term, except that the Rental Payments shall be as provided in the Payment Schedule.

Section 3.02. Termination of Lease Term. The Lease Term shall terminate upon the earliest of any of the following events:

(a) the expiration of the Original Term or any Renewal Term and the nonrenewal of this Agreement in the event of nonappropriation of funds pursuant to Section 3.04;

(b) the exercise by Lessee of the option to purchase the Property under Article X and payment of the Purchase Price and all amounts payable in connection therewith;

(c) a default by Lessee and Lessor's election to terminate this Agreement under Article XII; or

(d) the payment by Lessee of all Rental Payments authorized or required to be paid by Lessee hereunder during the Maximum Lease Term.

Section 3.03. Continuation of Lease Term. Lessee currently intends, subject to Section 3.04, to continue the Lease Term through the Original Term and all of the Renewal Terms and to pay the Rental Payments hereunder. Lessee reasonably believes that legally available funds in an amount sufficient to make all Rental Payments during the Original Term and each of the Renewal Terms can be obtained. The responsible financial officer of Lessee shall do all things lawfully within his or her power to obtain and maintain funds from which the Rental Payments may be made, including making provision for such Rental Payments to the extent necessary in each proposed annual budget submitted for approval in accordance with applicable procedures of Lessee and to exhaust all available reviews and appeals in the event such portion of the budget is not approved. Notwithstanding the foregoing, the decision whether or not to budget or appropriate funds or to extend this Agreement for any Renewal Term is solely within the discretion of the then current governing body of Lessee.

Section 3.04. Nonappropriation. Lessee is obligated only to pay such Rental Payments under this Agreement as may lawfully be made from funds budgeted and appropriated for that purpose during Lessee's then current fiscal year. In the event sufficient funds shall not be appropriated or are not otherwise legally available to pay the Rental Payments required to be paid in the next occurring Renewal Term, as set forth in the Payment Schedule, this Agreement shall be deemed to be terminated at the end of the then current Original Term or Renewal Term. Lessee agrees to deliver written notice to Lessor of such termination at least 90 days prior to the end of the then current Original Term or Renewal Term, but failure to give such notice shall not extend the Lease Term beyond such Original Term or

Renewal Term. If this Agreement is terminated in accordance with this Section, Lessee's rights to the Property will simultaneously terminate and Lessee agrees, at Lessee's cost and expense, (a) to immediately discontinue use of the Property, (b) to return to Lessor any portion of the Property constituting tangible personal property, (c) to remove any intangible Property from Lessee's property and terminate access to and use of such Property, whether such Property is installed on premises or accessed remotely or by internet connection and, as applicable, deliver or otherwise release the same to Vendor at the location or locations specified by Vendor, and (d) within 30 days of any such termination, to deliver a certificate to Lessor certifying that Lessee has complied with this sentence.

ARTICLE IV

Section 4.01. Rental Payments. Lessee shall pay Rental Payments exclusively from legally available funds, in lawful money of the United States of America to Lessor on the dates and in the amounts set forth on the Payment Schedule. Any Rental Payment not received on or before its due date shall bear interest at the rate of 18% per annum or the maximum amount permitted by law, whichever is less, from its due date. As set forth on the Payment Schedule, a portion of each Rental Payment is paid as, and represents payment of, interest.

Section 4.02. Rental Payments to Constitute a Current Expense of Lessee. The obligation of Lessee to pay Rental Payments hereunder shall constitute a current expense of Lessee, and does not constitute a mandatory payment obligation of Lessee in any fiscal year beyond the then current fiscal year of Lessee. Lessee's obligation hereunder shall not in any way be construed to be a debt of Lessee in contravention of any applicable constitutional or statutory limitation or requirement concerning the creation of indebtedness by Lessee, nor shall anything contained herein constitute a pledge of the general credit, tax revenues, funds or moneys of Lessee.

Section 4.03. Rental Payments To Be Unconditional. EXCEPT AS PROVIDED IN SECTION 3.04, THE OBLIGATIONS OF LESSEE TO MAKE RENTAL PAYMENTS AND TO PERFORM AND OBSERVE THE OTHER COVENANTS AND AGREEMENTS CONTAINED HEREIN SHALL BE ABSOLUTE AND UNCONDITIONAL IN ALL EVENTS WITHOUT ABATEMENT, DIMINUTION, DEDUCTION, SET-OFF OR DEFENSE, FOR ANY REASON, INCLUDING WITHOUT LIMITATION ANY FAILURE OF THE PROPERTY TO BE DELIVERED OR INSTALLED, ANY DEFECTS, MALFUNCTIONS, BREAKDOWNS OR INFIRMITIES IN THE PROPERTY OR ANY ACCIDENT, CONDEMNATION OR UNFORESEEN CIRCUMSTANCES.

ARTICLE V

Section 5.01. Delivery, Installation and Acceptance of the Property. Lessee shall (a) order the Property, (b) cause any portion of the Property constituting tangible personal property to be delivered and installed at the location specified on the front of this Agreement, (c) cause any intangible Property to be accessible from Lessee's computers, servers and other electronic equipment, either by installing the software directly on premises or providing remote access thereto, and (d) pay any and all delivery, installation and other costs in connection therewith. When the Property has been delivered and installed or is otherwise accessible by the Lessee, Lessee shall immediately accept the Property and evidence said acceptance by executing and delivering to Lessor an acceptance certificate acceptable to Lessor. After it has been installed, any portion of the Property constituting tangible personal property and any computers, servers and other electronic equipment using intangible Property will not be moved from the location specified on the front of this Agreement without Lessor's consent, which consent shall not be unreasonably withheld.

Section 5.02. Enjoyment of Property. Lessee shall peaceably and quietly have and hold and enjoy the Property during the Lease Term, without suit, trouble or hindrance from Lessor, except as otherwise expressly set forth in this Agreement.

Section 5.03. Right of Inspection. Lessor shall have the right at all reasonable times during regular business hours to enter into and upon the property of Lessee for the purpose of inspecting any portion of the Property constituting tangible personal property.

Section 5.04. Use and Maintenance of the Property. Lessee will not install, use, operate or maintain the Property improperly, carelessly, in violation of any licensing or other agreement, or in violation of any applicable law or in a manner contrary to that contemplated by this Agreement. Lessee shall obtain all permits and licenses, if any, necessary for the installation, use, operation and maintenance of the Property. In addition, Lessee shall comply in all respects with all applicable laws, regulations and rulings of any legislative, executive, administrative or judicial body; provided that Lessee may contest in good faith the validity or application of any such law, regulation or ruling in any reasonable manner that does not, in the opinion of Lessor, adversely affect the interest or rights of Lessor under this Agreement. Lessee agrees that it will, at Lessee's own cost and expense, maintain, preserve and keep the Property in good repair, working order and condition and install all updates, upgrades, improvements and additions to the Property made available to it by Vendor. Lessor shall have no responsibility to maintain or repair or to provide or make updates, upgrades, improvements or additions to the Property.

ARTICLE VI

Section 6.01. Title to the Property. During the Lease Term, title to the Property shall vest in Lessee, subject to the provisions of this Agreement and any applicable license or other agreement. Upon any termination of this Agreement pursuant to Sections 3.02(a) or Section 3.02(c), Lessee's title shall immediately and without any action by Lessee terminate. Upon any termination of the Agreement pursuant to Sections 3.02(b) or 3.02(d), title to the Property shall be vested in Lessee, free and clear of any claim by or through Lessor.

Section 6.02. UCC FILINGS. Lessee authorizes Lessor to file a financing statement with respect to the Property.

ARTICLE VII

Section 7.01. Liens, Taxes, Other Governmental Charges and Utility Charges. Lessee shall keep the Property free and clear of all liens, charges and encumbrances, except those created under this Agreement. The parties to this Agreement contemplate that the Property will be used for a governmental or proprietary purpose of Lessee and, therefore, that the Property will be exempt from all property taxes and other similar charges. If the licensing, use, possession or acquisition of the Property is found to be subject to taxation in any form, Lessee will pay all taxes and governmental charges lawfully assessed or levied against or with respect to the Property. Lessee shall pay all utility and other charges incurred in the use and maintenance of the Property. Lessee shall pay such taxes and charges as the same become due; provided that, with respect to any such taxes and charges that may lawfully be paid in installments over a period of years, Lessee shall be obligated to pay only such installments that accrue during the Lease Term.

Section 7.02. Insurance. At its own expense, Lessee shall maintain (a) casualty insurance insuring any portion of the Property constituting tangible personal property against loss or damage by fire and all other risks covered by the standard extended coverage endorsement then in use in the State and any other risks reasonably required by Lessor in an amount at least equal to the then applicable Purchase Price of the Property, (b) liability insurance that protects Lessor from liability in all events in form and amount satisfactory to Lessor, and (c) workers' compensation coverage as required by the laws of the State; provided that, with Lessor's prior written consent, Lessee may self insure against the risks described in clauses (a) and (b). All insurance proceeds from casualty losses shall be payable as hereinafter provided. Lessee shall furnish to Lessor certificates evidencing such coverage throughout the Lease Term, as applicable. All such casualty and liability insurance shall be with insurers that are acceptable to Lessor, shall name Lessor as a loss payee and an additional insured, respectively, and shall contain a provision to the effect that such insurance shall not be cancelled or modified materially without first giving written notice thereof to Lessor at least ten days in advance of such cancellation or modification. All such casualty insurance shall contain a provision making any losses payable to Lessee and Lessor, as their respective interests may appear.

Section 7.03. Advances. In the event Lessee shall fail to maintain the insurance required by this Agreement, pay the taxes or charges required to be paid by it under this Agreement or keep the Property in good repair and operating condition, Lessor may, but shall be under no obligation to, purchase the required policies of insurance and pay the cost of the premiums thereof, pay such taxes and charges and maintain and repair the Property and pay the cost thereof. All amounts so advanced by Lessor shall become additional rent for the then current Original Term or Renewal Term. Lessee agrees to pay such amounts with interest thereon from the date paid at the rate of 12% per annum or the maximum permitted by law, whichever is less.

Section 7.04. Financial Information. Lessee will annually provide Lessor with current financial statements, budgets, proofs of appropriation for the ensuing fiscal year and such other financial information relating to the ability of Lessee to continue this Agreement as may be requested by Lessor.

Section 7.05. Release and Indemnification. To the extent permitted by law, Lessee shall indemnify, protect and hold harmless Lessor from and against any and all liability, obligations, losses, claims and damages whatsoever, regardless of cause thereof, and expenses in connection therewith (including, without limitation, counsel fees and expenses and any federal income tax and interest and penalties connected therewith imposed on interest received) arising out of or as the result of (a) the entering into this Agreement, (b) the ownership of any item of the Property, (c) the ordering, licensing, acquisition, use, operation, condition, purchase, delivery, rejection, storage or return of any item of the Property, (d) any accident in connection with the licensing, operation, use, condition, possession, storage or return of any item of the Property resulting in damage to property or injury or death to any person or (e) the breach of any covenant herein or any material misrepresentation contained herein. The indemnification arising under this paragraph shall continue in full force and effect notwithstanding the full payment of all obligations under this Agreement or the termination of the Lease Term for any reason.

ARTICLE VIII

Section 8.01. Risk of Loss. Lessee assumes, from and including the Commencement Date, all risk of loss of or damage to the Property from any cause whatsoever. No such loss of or damage to the Property nor defect therein nor unfitness or obsolescence thereof shall relieve Lessee of the obligation to make Rental Payments or to perform any other obligation under this Agreement.

Section 8.02. Damage, Destruction, Unfitness for Use and Condemnation. If (a) any portion of the Property constituting tangible personal property is destroyed, in whole or in part, or is damaged by fire or other casualty or if any portion of the Property is otherwise rendered unfit for use by any cause whatsoever, or (b) title to, or the temporary use of, any portion of the Property or the interest of Lessee or Lessor in any portion of the Property shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, Lessee and Lessor will cause the Net Proceeds to be applied to the prompt replacement, repair or restoration of the Property, unless Lessee shall have exercised its option to purchase Lessor's interest in the Property pursuant to Article X. Any balance of the Net Proceeds remaining after such replacement, repair or restoration of the Property has been completed shall be paid to Lessee.

Section 8.03. Insufficiency of Net Proceeds. If the Net Proceeds are insufficient to pay in full the cost of any replacement, repair or restoration referred to in Section 8.02, Lessee shall either (a) complete such replacement, repair or restoration and pay any costs thereof in excess of the amount of the Net Proceeds, or (b) purchase Lessor's interest in the Property pursuant to Article X. The amount of the Net Proceeds, if any, remaining after completing such replacement, repair or restoration or after purchasing the Property shall be retained by Lessee. If Lessee shall make any payments pursuant to this Section, Lessee shall not be entitled to any reimbursement therefor from Lessor nor shall Lessee be entitled to any diminution of the amounts payable under Article IV.

ARTICLE IX

Section 9.01. Disclaimer of Warranties. LESSOR MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, AS TO THE VALUE, DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR PARTICULAR USE OR PURPOSE OF THE PROPERTY OR AGAINST INFRINGEMENT, OR ANY OTHER WARRANTY OR REPRESENTATION WITH RESPECT THERETO. IN NO EVENT SHALL LESSOR BE LIABLE FOR ANY ACTUAL, INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGE IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR THE EXISTENCE, FURNISHING, FUNCTIONING OR LESSEE'S USE OR MAINTENANCE OF ANY PROPERTY PROVIDED FOR IN THIS AGREEMENT.

Section 9.02. Vendor's Warranties. Lessee may have rights under the contract evidencing the purchase of the Property or licensing or other agreements; Lessee is advised to contact the Vendor for a description of any such rights. Lessor hereby assigns to Lessee during the Lease Term all rights under any licensing or other agreement and warranties, if any, running from Vendor to Lessor included in or respecting the Property. Lessor hereby irrevocably appoints Lessee its agent and attorney in fact during the Lease Term, so long as Lessee shall not be in default hereunder, to assert from time to time whatever claims and rights (including without limitation warranties) related to the Property that Lessor may have against the Vendor. Lessee's sole remedy for the breach of any such licensing or other agreement, warranty, indemnification or representation shall be against the Vendor, and not against Lessor. Any such matter shall not have any effect whatsoever on the rights and obligations of Lessor with respect to this Agreement, including the right to receive full and timely payments hereunder. Lessee expressly acknowledges that Lessor makes, and has made, no

representations or warranties whatsoever as to the existence or availability of such agreements or warranties by any Vendor.

ARTICLE X

Section 10.01. Purchase Option. Lessee shall have the option to purchase Lessor's interest in all (but not less than all) of the Property, upon giving written notice to Lessor at least 60 (but not more than 180) days before the date of purchase, at the following times and upon the following terms:

(a) On any Rental Payment Date, upon payment in full of the Rental Payments and all other amounts then due hereunder plus the then applicable Purchase Price to Lessor; or

(b) If substantially all of the Property is substantially damaged, destroyed or otherwise rendered unfit for use or is condemned, on the day Lessee specifies as the purchase date in Lessee's notice to Lessor of its exercise of the purchase option, upon payment in full of the Rental Payments and all other amounts then due hereunder plus (i) the Purchase Price designated on the Payment Schedule for such purchase date if such purchase date is a Rental Payment Date or the Purchase Price for the immediately preceding Rental Payment Date if such purchase date is not a Rental Payment Date, and (ii) if such day is not a Rental Payment Date, an amount equal to the portion of the interest component of the Rental Payment scheduled to come due on the following Rental Payment Date accrued from the immediately preceding Rental Payment Date to such purchase date, computed on the basis of a 360 day year of twelve 30 day months.

Upon the exercise of the option to purchase set forth above, title to the Property shall be vested in Lessee, free and clear of any claim by or through Lessor.

Section 10.02. Determination of Fair Purchase Price. Lessee and Lessor hereby agree and determine that the Rental Payments hereunder during the Original Term and each Renewal Term represent the fair value of the use of the Property and that the amount required to exercise Lessee's option to purchase Lessor's interest in the Property pursuant to Section 10.01 represents, as of the end of the Original Term or any Renewal Term, the fair purchase price of the Property. Lessee hereby determines that the Rental Payments do not exceed a reasonable amount so as to place Lessee under a practical economic compulsion to renew this Agreement or to exercise its option to purchase the Property hereunder. In making such determinations, Lessee and Lessor have given consideration to (a) the costs of the Property, (b) the uses and purposes for which the Property will be employed by Lessee, (c) the benefit to Lessee by reason of the acquisition and installation of the Property and the use of the Property pursuant to the terms and provisions of this Agreement and any applicable licensing and other agreements, and (d) Lessee's option to purchase Lessor's interest in the Property.

ARTICLE XI

Section 11.01. Assignment by Lessor. Lessor's interest in, to and under this Agreement and the Property may, without notice to or the consent of Lessee, be assigned and reassigned in whole or in part to one or more assignees by Lessor. Lessee hereby appoints Municipal Registrar Services (the "Registrar") as its agent for the purpose of maintaining a written record of each such assignment in form necessary to comply with Section 149(a) of the Code. No such assignment shall be binding on Lessee until the Registrar has received written notice from Lessor of the name and address of the assignee. Lessee agrees to execute all documents, including chattel mortgages or financing statements that may be reasonably requested by Lessor or any assignee to protect its interest in the Property and in this Agreement. Lessee shall not have the right to and shall not assert against any assignee any claim, counterclaim, defense, set-off or other right Lessee may from time to time have against Lessor.

Section 11.02. Assignment and Subleasing by Lessee. None of Lessee's right, title and interest in, to and under this Agreement and in the Property may be assigned or encumbered by Lessee for any reason, except that Lessee may sublease all or part of the Property, to the extent, if any, permitted by any applicable licensing and other agreements, if Lessee obtains the prior written consent of Lessor and an opinion of nationally recognized counsel in the area of tax exempt municipal obligations satisfactory to Lessor that such subleasing will not adversely affect the exclusion of the interest components of the Rental Payments from gross income for federal income tax purposes. Any such sublease of all or part of the Property shall be subject to this Agreement and the rights of the Lessor in, to and under this Agreement and the Property.

ARTICLE XII

Section 12.01. Events of Default Defined. Subject to the provisions of Section 3.04, any of the following shall be "Events of Default" under this Agreement:

(a) Failure by Lessee to pay any Rental Payment or other payment required to be paid hereunder at the time specified herein;

(b) Any termination or suspension of any of Lessee's rights under any licensing agreement included in the Property.

(c) Failure by Lessee to observe and perform any covenant, condition or agreement on its part to be observed or performed or to comply with any licensing or other agreement included in or respecting the Property, other than as referred to in Section 12.01(a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to Lessee by Lessor, unless Lessor shall agree in writing to an extension of such time prior to its expiration; provided, however, if the failure stated in the notice cannot be corrected within the applicable period, Lessor will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by Lessee within the applicable period and diligently pursued until the default is corrected;

(d) Any statement, representation or warranty made by Lessee in or pursuant to this Agreement or its execution, delivery or performance shall prove to have been false, incorrect, misleading or breached in any material respect on the date when made;

(e) Any provision of this Agreement shall at any time for any reason cease to be valid and binding on Lessee, or shall be declared to be null and void, or the validity or enforceability thereof shall be contested by Lessee or any governmental agency or authority if the loss of such provision would materially adversely affect the rights or security of Lessor, or Lessee shall deny that it has any further liability or obligation under this Agreement;

(f) Lessee shall (i) apply for or consent to the appointment of a receiver, trustee, custodian or liquidator of Lessee, or of all or a substantial part of the assets of Lessee, (ii) be unable, fail or admit in writing its inability generally to pay its debts as they become due, (iii) make a general assignment for the benefit of creditors, (iv) have an order for relief entered against it under applicable federal bankruptcy law, or (v) file a voluntary petition in bankruptcy or a petition or an answer seeking reorganization or an arrangement with creditors or taking advantage of any insolvency law or any answer admitting the material allegations of a petition filed against Lessee in any bankruptcy, reorganization or insolvency proceeding; or

(g) An order, judgment or decree shall be entered by any court of competent jurisdiction, approving a petition or appointing a receiver, trustee, custodian or liquidator of Lessee or of all or a substantial

part of the assets of Lessee, in each case without its application, approval or consent, and such order, judgment or decree shall continue unstayed and in effect for any period of 30 consecutive days.

Section 12.02. Remedies on Default. Whenever any Event of Default exists, Lessor shall have the right, at its sole option without any further demand or notice, to take one or any combination of the following remedial steps:

(a) By written notice to Lessee, Lessor may declare all Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term to be due.

(b) Lessor may terminate this Agreement and hold Lessee liable for Rental Payments and other amounts payable by Lessee hereunder to the end of the then current Original Term or Renewal Term, and in such event, Lessee's rights to the Property will simultaneously terminate and Lessee agrees, at Lessee's cost and expense, (a) to immediately discontinue use of the Property, (b) to return to Lessor any portion of the Property constituting tangible personal property, (c) to remove any intangible Property from Lessee's property and terminate access to and use of such Property, whether such Property is installed on premises or accessed remotely or by internet connection and, as applicable, deliver or otherwise release the same to Vendor at the location or locations specified by Vendor, and (d) within 30 days of any such termination, to deliver a certificate to Lessor certifying that Lessee has complied with this sentence. Lessor reserves the right to, and Lessee agrees that the Lessor or Vendor may, upon termination of this Agreement, enter the premises where the Property is located or used to retake possession of the Property or ensure compliance with the previous sentence.

(c) Lessor may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights as Lessor under this Agreement.

In addition, Lessee will remain liable for all covenants and indemnities under this Agreement and for all legal fees and other costs and expenses, including court costs, incurred by Lessor with respect to the enforcement of any of the remedies listed above or any other remedy available to Lessor. Lessor may charge interest on all amounts due to it at the rate of 18% per annum or the maximum amount permitted by law, whichever is less.

Section 12.03. No Remedy Exclusive. No remedy herein conferred upon or reserved to Lessor is intended to be exclusive and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle Lessor to exercise any remedy reserved to it in this Article it shall not be necessary to give any notice, other than such notice as may be required in this Article.

ARTICLE XIII

Section 13.01. Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when delivered or mailed by registered mail, postage prepaid, to the parties at the addresses on the front of this Agreement (or at such other address as either party hereto shall designate in writing to the other for notices to such party), to any assignee at its address as it appears on the registration books maintained by Lessee.

Section 13.02. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon Lessor and Lessee and their respective successors and assigns.

Section 13.03. Severability. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 13.04. Entire Agreement. This Agreement constitutes the entire agreement between Lessor and Lessee.

Section 13.05. Amendments. This Agreement may be amended in writing by Lessor and Lessee.

Section 13.06. INTENTIONALLY OMITTED.

Section 13.07. Usury. The parties hereto agree that the charges in this Agreement shall not be a violation of usury or other law. Any such excess charge shall be applied in such order as to conform this Agreement to such applicable law.

Section 13.08. Jury Trial Waiver. TO THE EXTENT PERMITTED BY LAW, LESSEE AGREES TO WAIVE ITS RIGHT TO A TRIAL BY JURY.

Section 13.09. INTENTIONALLY OMITTED.

Section 13.10. Captions. The captions or headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

Section 13.11. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State.

Section 13.12. Role of Lessor. Lessor has not acted and will not act as a fiduciary for Lessee or as Lessee's agent or municipal advisor. Lessor has not and will not provide financial, legal, tax, accounting or other advice to Lessee or to any financial advisor or placement agent engaged by Lessee with respect to this Agreement. Lessee, its financial advisor, placement agent or municipal advisor, if any, shall each seek and obtain its own financial, legal, tax, accounting and other advice with respect to this Agreement from its own advisors (including as it relates to structure, timing, terms and similar matters).

Section 13.13. Electronic Transactions. Lessor, in its sole discretion, may permit Lessee to electronically copy and/or deliver by telecopier or other electronic means of transmission an executed counterpart of this Agreement, and any document, schedule, amendment, addendum, supplement or agreement related hereto or executed in connection herewith, with the exception of the IRS Form 8038-G which Lessee must execute using an original, manual signature (not e-Signature). By so copying and/or delivering any such document, Lessee hereby represents and agrees (a) that such transmission constitutes due delivery of such executed document, (b) that the counterpart of such executed document as printed by the recipient, including Lessee's signature thereon, shall be deemed to constitute an original and shall be admissible in any court or other legal proceeding as an original, and (c) to deliver to Lessor, promptly on request, such document bearing Lessee's original "wet ink" signature; provided that neither delivery nor failure to deliver the document bearing Lessee's original "wet ink" signature shall limit or modify the representations and agreements set forth in clauses (a) and (b). This Agreement, including any document, schedule, amendment, addendum, supplement or agreement related hereto or executed in connection herewith with the exception of the IRS Form 8038-G, may be executed in counterparts and any facsimile, photographic or other electronic transmission and/or electronic signing of the Agreement by the Lessee when manually countersigned by Lessor or attached to Lessor's original signature counterpart and/or in Lessor's possession shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. At Lessor's option, Lessor may require a manual signature.

INCUMBENCY CERTIFICATE

Re: Lease Purchase Agreement dated as of JULY 14, 2021 (the "Agreement"), between De Lage Landen Public Finance LLC ("Lessor") and City Of Aurora ("Lessee").

Being a knowledgeable and authorized agent of Lessee, I hereby certify to Lessor that the person(s) who executed the Agreement are legally authorized to do so on behalf of Lessee and that the signatures that appear on the Agreement are genuine.

LESSEE	Lessee Name City Of Aurora	
	Signature	Date
	Print Name	
	Title	

(THE INCUMBENCY IS TO BE EXECUTED BY A PERSON OTHER THAN THE SIGNER OF THE AGREEMENT AND RELATED DOCUMENTS. THIS MAY BE A BOARD CLERK/SECRETARY, BOARD MEMBER OR SUPERINTENDENT.)

19TEIA002Bv3

COLORADO ADDENDUM TO LEASE PURCHASE AGREEMENT

This Addendum to that certain Lease Purchase Agreement (together with all Exhibits and this Addendum, the "Agreement") dated as of JULY 14, 2021, between DEL AGE LANDEN PUBLIC FINANCE LLC (together with its successors and assigns, "Lessor"), and City Of Aurora (together with its successors and assigns, "Lessee"), is incorporated in and is hereby made a part of the Agreement. Lessor and Lessee hereby agree that capitalized terms used herein and not otherwise defined herein shall have the terms assigned to such terms in the Agreement and that the following changes and additions shall be made to the Agreement:

1. **Section 6.01** of the Agreement is hereby deleted and the following **Section 6.01** is hereby inserted in lieu thereof:

Section 6.01. Title to the Equipment in Lessor. Upon acceptance of the Property by Lessee, title to the Property shall vest in Lessor subject to Lessee's rights under this Agreement. Lessee shall not have any right, title or interest in the Property except as expressly set forth in this Agreement. Upon the occurrence of an Event of Default or any termination of this Agreement other than termination pursuant to Section 10.01, Lessee will immediately surrender possession of the Property to Lessor. Upon the exercise of the purchase option by Lessee pursuant to Section 10.01 or continuation of this Agreement through the Maximum Lease Term and payment of all Rental Payments and other amounts payable under this Agreement through the end of the Maximum Lease Term, title to the Property shall immediately and without further action by Lessor vest in Lessee AS IS, WHERE IS, without warranty, express or implied, free and clear of any claim by or through Lessor. It is the intent of the parties hereto that any transfer of title to Lessee pursuant to this Section shall occur automatically without the necessity of any bill of sale, certificate of title or other instrument of conveyance. Lessor shall, nevertheless, execute and deliver any such instruments as Lessee may request to evidence such transfer.

2. **Section 6.02** of the Agreement is hereby deleted.

Except as specifically set forth in this Addendum, all terms and conditions contained in the Agreement remain in full force and effect and are hereby ratified and confirmed.

LESSEE SIGNATURE	Legal Name of Lessee <u>City Of Aurora</u>
	Signature _____ Date _____
	Print Name _____
	Title _____
	(Seal)
	Attest _____
	Title _____ Date _____

LESSOR SIGNATURE	Name of Lessor <u>DEL AGE LANDEN PUBLIC FINANCE LLC</u>
	Lessor Signature _____ Date _____
	Print Name _____
	Title _____
	Lease Number <u>500-50294217</u>

EXHIBIT A

LEASE PURCHASE AGREEMENT

Payment Schedule

LESSOR: DEL AGE LANDEN PUBLIC FINANCE LLC

LESSEE: City Of Aurora

LEASE NUMBER: 500-50294217

LEASE DATE: JULY 14, 2021

Rental Payment Number	Rental Payment Due Date	Rental Payment	Interest Portion	Principal Portion	Balance	Purchase Price
Loan	07/27/2021	0	0	0	540,000.00	-
1	08/27/2021	183,737.97	881.75	182,856.22	357,143.78	364,286.66
2	08/27/2022	183,737.97	6,866.32	176,871.65	180,272.13	183,877.57
3	08/27/2023	183,737.97	3,465.84	180,272.13	0.00	-
Grand Totals		551,213.91	11,213.91	540,000.00		-

Sales tax of \$0.00 is included in the financed amount shown above.

The interest rate reflected herein is provided as an indication only and may need to be revised prior to closing. The Lessor will make reasonable efforts to maintain the rate presented herein. However, the rate may need to be revised prior to closing due to change in law or market conditions. In the event that market interest rates increase prior to the date of closing (which causes an increase in the Lessor's cost of funds), the interest rate will be indexed to reflect adjustments to the Lender's actual cost of funds due to market and legal changes incurred since the date of this documentation.

Lessee Signature: _____ Date: _____

Print Name: _____ Title: _____

MUNICIPAL AUTHORIZATION

Date JULY 14 , 2021

Reference is made to the lease, loan, rental and/or other financial agreement (the "Finance Agreement") dated JULY 14 , 2021 between DEL AGE LANDEN PUBLIC FINANCE LLC (herein called "Creditor") and City Of Aurora (herein called "Obligor") for the financing of SEE QUOTE # Q-04716 DATED 7/10/21 (equipment description).

The undersigned acknowledge in connection with the negotiation, execution and delivery of the Finance Agreement and other related documents by and between Creditor and Obligor (collectively the "Documents"):

1. The Finance Agreement set forth above and any Documents executed in connection therein have been duly authorized, executed and delivered by the Obligor and constitutes a valid, legal and binding agreement enforceable in accordance with its terms. Additionally, I do hereby certify on behalf of Obligor, that the individual who signed the Finance Agreement and any related Documents is authorized to execute and deliver such to Creditor.
2. All required Procurement and approval procedures, including but not limited to public bidding procedures regarding the award of the Finance Agreement have been followed by the Obligor and no further approval, consent or withholding of objections is required from any Federal, state or local governmental authority with respect to the entering into or performance by Obligor of the Finance Agreement contemplated hereby.
3. Except as provided in the Finance Agreement or the Documents, Obligor has no authority (statutory or otherwise) to terminate the Finance Agreement prior to the end of its term for any reason other than non-appropriation of funds to pay the Finance Agreements Payments for any fiscal period during the term of the Finance Agreement.

YOU AGREE THAT A FACSIMILE COPY OF THIS DOCUMENT WITH FACSIMILE SIGNATURES MAY BE TREATED AS AN ORIGINAL AND WILL BE ADMISSIBLE AS EVIDENCE IN A COURT OF LAW.

The undersigned by signing below hereby affirms the statements made above are based upon the undersigned's personal knowledge, and as to those matters, believes the information to be true and correct.

CREDITOR SIGNATURE	Creditor Name <u>DEL AGE LANDEN PUBLIC FINANCE LLC</u>
	Signature X _____
	Print Name _____
	Title _____

OBLIGOR SIGNATURE	Obligor Name <u>City Of Aurora</u>
	Signature X _____
	Print Name _____
	Title _____

OBLIGOR SIGNATURE	Obligor Name <u>City Of Aurora</u>
	Signature X _____
	Print Name _____
	Title _____

BILLING INFORMATION

PLEASE COMPLETE THIS FORM AND RETURN WITH DOCUMENTS

In order for DEL AGE LANDEN PUBLIC FINANCE LLC to properly bill and credit your account, it is necessary that you complete this form and return it with the signed documents.

Billing Name: _____

If you would like your invoices emailed to you in place of regular mail, please provide an email address(es) below:

***YOUR INVOICES WILL BE EMAILED FROM INVOICEDELIVERY@PAYEREXPRESS.COM
Subject line will read: Your Lease Direct Invoice is ready to view online!**

Billing Address: _____

Attention: _____

Telephone Number: _____

FEDERAL TAX ID#: _____

Lease/Contract Signer Name: _____ Date of Birth _____ (only provide if requested)

SPECIAL INSTRUCTIONS

Do you require a Purchase Order Number on the invoice? **If yes, please provide PO#** _____ YES NO

Is a new purchase order required for each new fiscal period? YES NO

If yes, provide month/year PO expires _____

Are you sales tax exempt? **If yes, please attach a copy of exempt certificate or direct pay permit.** YES NO

Do you require any special information to establish a vendor number for _____? YES NO

If yes, please advise: _____

Additional Comments: _____

CONTACT INFORMATION AND QUESTIONNAIRE FOR FORM 8038-G FILINGS (required for all State and Local Government transactions)

Contact Name: _____

Title: _____

Contact Address: _____

Contact Telephone Number: _____

Email Address: _____

Written Tax Compliance Procedures

The IRS Form 8038-G asks specific questions about whether written procedures exist with regard to compliance with the federal tax requirements for tax-exempt obligations. Please answer the following questions to help us complete the form correctly prior to your signature. **Please note that your answers to these questions will not impact the terms or conditions of the subject transaction:**

1. Has the Lessee established written procedures designed to monitor compliance with federal tax restrictions for the term of the lease? Among other matters, the written procedures should identify a particular individual within Lessee's organization to monitor compliance with the federal tax requirements related to use of the financed assets and describe actions to be taken in the event failure to comply with federal tax restrictions is contemplated or discovered.

YES NO If YES, please attach/provide a copy.

Answer the following question only if proceeds of the current financing will be funded to an ESCROW Account.

The IRS Form 8038-G asks specific questions about written procedures to monitor the yield on the investment of gross proceeds of tax-exempt obligations and, as necessary, make payments of arbitrage rebate earned to the United States.

2. Has the Lessee established written procedures to monitor the yield on the investment of proceeds of the Lease on deposit in an escrow account or similar fund prior to being spent and to ensure that any positive arbitrage rebate earned is paid to the United States?

YES NO If YES, please attach/provide a copy.

If you have further questions, please consult your regular bond or legal counsel.

Part I Reporting Authority			If Amended Return, check here <input type="checkbox"/>	
1 Issuer's name City Of Aurora			2 Issuer's employer identification number (EIN) XXXXXXXXXXXX	
3a Name of person (other than issuer) with whom the IRS may communicate about this return (see instructions) XX			3b Telephone number of other person shown on 3a XXXXXXXXXXXXXXXXXXXX	
4 Number and street (or P.O. box if mail is not delivered to street address) 15151 E ALAMEDA PKWY		Room/suite XXXXXX	5 Report number (For IRS Use Only) 13	
6 City, town, or post office, state, and ZIP code AURORA CO 80012			7 Date of issue XXXXXXXXXXXXXXXXXXXX	
8 Name of issue XX			9 CUSIP number XXXXXXXXXXXXXXXXXXXX	
10a Name and title of officer or other employee of the issuer whom the IRS may call for more information (see instructions) XX			10b Telephone number of officer or other employee shown on 10a XXXXXXXXXXXXXXXXXXXX	

Part II Type of Issue (enter the issue price). See the instructions and attach schedule.		
11 Education	11 XXXXXXXXXXXX	XX
12 Health and hospital	12 XXXXXXXXXXXX	XX
13 Transportation	13 XXXXXXXXXXXX	XX
14 Public safety	14 XXXXXXXXXXXX	XX
15 Environment (including sewage bonds)	15 XXXXXXXXXXXX	XX
16 Housing	16 XXXXXXXXXXXX	XX
17 Utilities	17 XXXXXXXXXXXX	XX
18 Other. Describe <input type="checkbox"/> XXX	18 XXXXXXXXXXXX	XX
19a If bonds are TANs or RANs, check only box 19a <input type="checkbox"/>		
b If bonds are BANs, check only box 19b <input type="checkbox"/>		
20 If bonds are in the form of a lease or installment sale, check box <input type="checkbox"/>		

Part III Description of Bonds. Complete for the entire issue for which this form is being filed.				
(a) Final maturity date	(b) Issue price	(c) Stated redemption price at maturity	(d) Weighted average maturity	(e) Yield
21 XXXXXXXXXXXX	\$ XXXXXXXXXXXX.XX	\$ XXXXXXXXXXXX.XX	XXXXXXXXXXXX years	XXXXXXXXXXXXXXXXXXXX %

Part IV Uses of Proceeds of Bond Issue (including underwriters' discount)				
22 Proceeds used for accrued interest	22 XXXXXXXXXXXX	XX		
23 Issue price of entire issue (enter amount from line 21, column (b))	23 XXXXXXXXXXXX	XX		
24 Proceeds used for bond issuance costs (including underwriters' discount)	24 XXXXXXXXXX	XX		
25 Proceeds used for credit enhancement	25 XXXXXXXXXX	XX		
26 Proceeds allocated to reasonably required reserve or replacement fund	26 XXXXXXXXXX	XX		
27 Proceeds used to refund prior tax-exempt bonds. Complete Part V	27 XXXXXXXXXX	XX		
28 Proceeds used to refund prior taxable bonds. Complete Part V	28 XXXXXXXXXX	XX		
29 Total (add lines 24 through 28)	29 XXXXXXXXXXXX	XX		
30 Nonrefunding proceeds of the issue (subtract line 29 from line 23 and enter amount here)	30 XXXXXXXXXXXX	XX		

Part V Description of Refunded Bonds. Complete this part only for refunding bonds.		
31 Enter the remaining weighted average maturity of the tax-exempt bonds to be refunded	▶ XXXXXXXXXXXX years	
32 Enter the remaining weighted average maturity of the taxable bonds to be refunded	▶ XXXXXXXXXXXX years	
33 Enter the last date on which the refunded tax-exempt bonds will be called (MM/DD/YYYY)	▶ XXXXXXXXXXXX	
34 Enter the date(s) the refunded bonds were issued ▶ (MM/DD/YYYY)	XX	

Part VI Miscellaneous

- 35** Enter the amount of the state volume cap allocated to the issue under section 141(b)(5) **35** XXXXXXXXXXXX XX
- 36a** Enter the amount of gross proceeds invested or to be invested in a guaranteed investment contract (GIC). See instructions **36a** XXXXXXXXXXXX XX
 - b** Enter the final maturity date of the GIC ▶ (MM/DD/YYYY) XXXXXXXXXXXXXXXX
 - c** Enter the name of the GIC provider ▶ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- 37** Pooled financings: Enter the amount of the proceeds of this issue that are to be used to make loans to other governmental units **37** XXXXXXXXXXXX XX
- 38a** If this issue is a loan made from the proceeds of another tax-exempt issue, check box ▶ and enter the following information:
 - b** Enter the date of the master pool bond ▶ (MM/DD/YYYY) XXXXXXXXXXXXXXXXXXXX
 - c** Enter the EIN of the issuer of the master pool bond ▶ XXXXXXXXXX
 - d** Enter the name of the issuer of the master pool bond ▶ XXXXXXXXXXXXXXXXXXXX
- 39** If the issuer has designated the issue under section 265(b)(3)(B)(i)(III) (small issuer exception), check box ▶
- 40** If the issuer has elected to pay a penalty in lieu of arbitrage rebate, check box ▶
- 41a** If the issuer has identified a hedge, check here ▶ and enter the following information:
 - b** Name of hedge provider ▶ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 - c** Type of hedge ▶ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
 - d** Term of hedge ▶ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- 42** If the issuer has superintegrated the hedge, check box ▶
- 43** If the issuer has established written procedures to ensure that all nonqualified bonds of this issue are remediated according to the requirements under the Code and Regulations (see instructions), check box ▶
- 44** If the issuer has established written procedures to monitor the requirements of section 148, check box ▶
- 45a** If some portion of the proceeds was used to reimburse expenditures, check here ▶ and enter the amount of reimbursement ▶ XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
- b** Enter the date the official intent was adopted ▶ (MM/DD/YYYY) XXXXXXXXXXXXXXXXXXXXXXXX

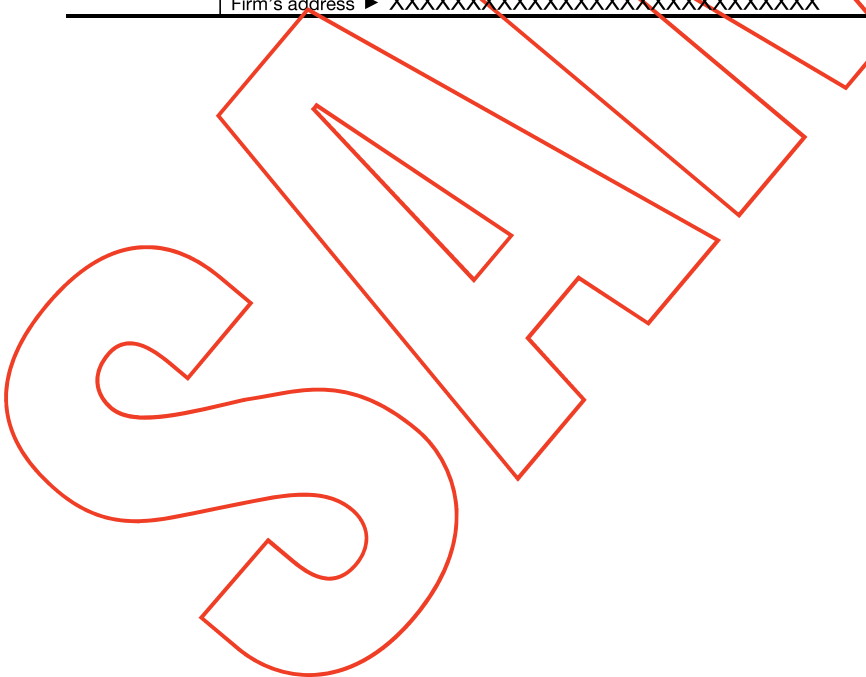
Signature and Consent

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. I further declare that I consent to the IRS's disclosure of the issuer's return information, as necessary to process this return, to the person that I have authorized above.

Signature of issuer's authorized representative _____ Date _____ Type or print name and title _____

Paid Preparer Use Only

Print/Type preparer's name XXXXXXXXXXXXXXXXXXXXXXXXXX	Preparer's signature _____	Date _____	Check <input type="checkbox"/> if self-employed	PTIN XXXXXXXXXXXX
Firm's name ▶ XXXXXXXXXXXXXXXXXXXXXXXX	Firm's EIN ▶ XXXXXXXXXX		Phone no. XXXXXXXXXXXXX	
Firm's address ▶ XXXXXXXXXXXXXXXXXXXXXXXX				



Instructions for Form 8038-G



Department of the Treasury
Internal Revenue Service

(Rev. September 2018)

Information Return for Tax-Exempt Governmental Bonds

Section references are to the Internal Revenue Code unless otherwise noted.

Future Developments

For the latest information about developments related to Form 8038-G and its instructions, such as legislation enacted after they were published, go to IRS.gov/Form8038G.

What's New

The Tax Cuts and Jobs Act (P.L. 115-97) repealed the exclusion from gross income for interest on bonds issued to advance refund tax-exempt bonds. The repeal applies to advance refunding bonds issued after 2017. A bond is an advance refunding bond if it is issued more than 90 days before the redemption of the refunded bonds.

The Tax Cuts and Jobs Act also repealed the authority to issue tax-credit bonds and direct-pay bonds. The repeal applies to qualified forestry conservation bonds, new clean renewable energy bonds, qualified energy conservation bonds, qualified zone academy bonds, and qualified school construction bonds issued after 2017. The authority to issue recovery zone economic development bonds and build America bonds expired on January 1, 2011.

Note. The creation of an advance refunding escrow account to advance refund tax-credit bonds and/or direct-pay bonds may result in the reissuance of the bonds and the loss of the tax benefits.

General Instructions

Purpose of Form

Form 8038-G is used by issuers of tax-exempt governmental bonds to provide the IRS with the information required by section 149(e) and to monitor compliance with the requirements of sections 141 through 150.

Who Must File

IF the issue price (line 21, column (b)) is...	THEN, for tax-exempt governmental bonds issued after December 31, 1986, issuers must file...
\$100,000 or more	a separate Form 8038-G for each issue.
less than \$100,000	Form 8038-GC, Information Return for Small Tax-Exempt Governmental Bond Issues, Leases, and Installment Sales.

When To File

File Form 8038-G on or before the 15th day of the 2nd calendar month after the close of the calendar quarter in which the bond is issued. Form 8038-G may not be filed before the issue date and must be completed based on the facts as of the issue date.

Late filing. An issuer may be granted an extension of time to file Form 8038-G under section 3 of Rev. Proc. 2002-48, 2002-37 I.R.B. 531, if it is determined that the failure to file timely is not due to willful neglect. Type or print at the top of the form "Request for Relief under section 3 of Rev. Proc. 2002-48" and attach a letter explaining why Form 8038-G was not submitted to the IRS on time. Also indicate whether the bond issue in question is under examination by the IRS. Do not submit copies of the trust indenture or other bond documents. See *Where To File* next.

Where To File

File Form 8038-G, and any attachments, with the Department of the Treasury, Internal Revenue Service Center, Ogden, UT 84201.

Private delivery services. You can use certain private delivery services (PDS) designated by the IRS to meet the "timely mailing as timely filing" rule for tax returns. Go to IRS.gov/PDS for the current list of designated services.

The PDS can tell you how to get written proof of the mailing date.

For the IRS mailing address to use if you're using PDS, go to IRS.gov/PDSstreetAddresses.



CAUTION PDS can't deliver items to P.O. boxes. You must use the U.S. Postal Service to mail any item to an IRS P.O. box address.

Other Forms That May Be Required

For rebating arbitrage (or paying a penalty in lieu of arbitrage rebate) to the federal government, use Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate.

For private activity bonds, use Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

Rounding to Whole Dollars

You can round off cents to whole dollars. If you do round to whole dollars, you must round all amounts. To round, drop amounts under 50 cents and increase amounts from 50 to 99 cents to the next dollar (for example, \$1.39 becomes \$1 and \$2.50 becomes \$3).

If two or more amounts must be added to figure the amount to enter on a line, include cents when adding the amounts and round off only the total.

Definitions

Bond. This is any obligation, including bond, note, commercial paper, installment purchase agreement, or financing lease.

Taxable bond. This is any bond the interest on which is not excludable from gross income under section 103. Taxable bonds include tax credit bonds and direct pay bonds.

Tax-exempt bond. This is any obligation, including a bond, installment purchase agreement, or financial lease, on which the interest is excluded from income under section 103.

Tax-exempt governmental bond. A tax-exempt bond that is not a private activity bond (see next) is a tax-exempt governmental bond. This includes a bond issued by a qualified volunteer fire department under section 150(e).

Private activity bond. This includes a bond issued as part of an issue in which:

- More than 10% of the proceeds are to be used for any private activity business use; **and**
- More than 10% of the payment of principal or interest of the issue is **either (a)** secured by an interest in property to be used for a private business use (or

payments for such property), or (b) to be derived from payments for property (or borrowed money) used for a private business use.

It also includes a bond, the proceeds of which (a) are to be used directly or indirectly to make or finance loans (other than loans described in section 141(c)(2)) to persons other than governmental units, and (b) exceeds the lesser of 5% of the proceeds or \$5 million.

Issue price. The issue price of bonds is generally determined under Regulations section 1.148-1(f). Thus, when issued for cash, the issue price is the first price at which a substantial amount of the bonds are sold to the public. To determine the issue price of a bond issued for property, see sections 1273 and 1274 and the related regulations.

Issue. Generally, bonds are treated as part of the same issue if they are issued by the same issuer, on the same date, and in a single transaction, or a series of related transactions (see Regulations section 1.149(e)-1(e)(2)). However, bonds issued during the same calendar year (a) under a loan agreement under which amounts are to be advanced periodically (a "draw-down loan"), or (b) with a term not exceeding 270 days, may be treated as part of the same issue if the bonds are equally and ratably secured under a single indenture or loan agreement and are issued under a common financing arrangement (for example, under the same official statement periodically updated to reflect changing factual circumstances). Also, for bonds issued under a draw-down loan that meet the requirements of the preceding sentence, bonds issued during different calendar years may be treated as part of the same issue if all of the amounts to be advanced under the draw-down loan are reasonably expected to be advanced within 3 years of the date of issue of the first bond. Likewise, bonds (other than private activity bonds) issued under a single agreement that is in the form of a lease or installment sale may be treated as part of the same issue if all of the property covered by that agreement is reasonably expected to be delivered within 3 years of the date of issue of the first bond.

Arbitrage rebate. Generally, interest on a state or local bond is not tax exempt unless the issuer of the bond rebates to the United States arbitrage profits earned from investing proceeds of the bond in higher yielding nonpurpose investments. See section 148(f).

Construction issue. This is an issue of tax-exempt bonds that meets both of the following conditions.

1. At least 75% of the available construction proceeds are to be used for

construction expenditures with respect to property to be owned by a governmental unit or a section 501(c)(3) organization.

2. All the bonds that are part of the issue are qualified 501(c)(3) bonds, bonds that are not private activity bonds, or private activity bonds issued to finance property to be owned by a governmental unit or a section 501(c)(3) organization.

In lieu of rebating any arbitrage that may be owed to the United States, the issuer of a construction issue may make an irrevocable election to pay a penalty. The penalty is equal to 1½% of the amount of construction proceeds that do not meet certain spending requirements. See section 148(f)(4)(C) and the Instructions for Form 8038-T.

Pooled financing issue. This is an issue of tax-exempt bonds, the proceeds of which are to be used to finance purpose investments representing conduit loans to two or more conduit borrowers, unless those conduit loans are to be used to finance a single capital project.

Specific Instructions

Part I—Reporting Authority

Amended return. An issuer may file an amended return to change or add to the information reported on a previously filed return for the same date of issue. If you are filing to correct errors or change a previously filed return, check the *Amended Return* box in the heading of the form.

The amended return must provide all the information reported on the original return, in addition to the new or corrected information. Attach an explanation of the reason for the amended return and write across the top, "Amended Return Explanation." Failure to attach an explanation may result in a delay in processing the form.

Line 1. The issuer's name is the name of the entity issuing the bonds, not the name of the entity receiving the benefit of the financing. For a lease or installment sale, the issuer is the lessee or the purchaser.

Line 2. An issuer that does not have an employer identification number (EIN) should apply online by visiting the IRS website at [IRS.gov/EIN](https://www.irs.gov/EIN). The organization may also apply for an EIN by faxing or mailing Form SS-4 to the IRS.

Line 3a. If the issuer wishes to authorize a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) to communicate with the IRS and whom the IRS may contact about this return (including in writing or by telephone), enter the name of such person here. The person listed on line 3a must be an individual. Do

not enter the name and title of an officer or other employee of the issuer here (use line 10a for that purpose).

Note. By authorizing a person other than an authorized officer or other employee of the issuer to communicate with the IRS and whom the IRS may contact about this return, the issuer authorizes the IRS to communicate directly with the individual entered on line 3a and consents to disclose the issuer's return information to that individual, as necessary, to process this return.

Lines 4 and 6. If you listed an individual on line 3a to communicate with the IRS and whom the IRS may contact about this return, enter the number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code of that person. Otherwise, enter the issuer's number and street (or P.O. box if mail is not delivered to street address), city, town, or post office, state, and ZIP code.

Note. The address entered on lines 4 and 6 is the address the IRS will use for all written communications regarding the processing of this return, including any notices.

Line 5. This line is for IRS use only. Do not make any entries in this box.

Line 7. The date of issue is generally the first date on which the issuer physically exchanges any bond included in the issue for the underwriter's (or other purchaser's) funds. For a lease or installment sale, enter the date interest starts to accrue in an MM/DD/YYYY format.

Line 8. If there is no name of the issue, please provide other identification of the issue.

Line 9. Enter the CUSIP (Committee on Uniform Securities Identification Procedures) number of the bond with the latest maturity. If the issue does not have a CUSIP number, write "None."

Line 10a. Enter the name and title of the officer or other employee of the issuer whom the IRS may call for more information. If the issuer wishes to designate a person other than an officer or other employee of the issuer (including a legal representative or paid preparer) whom the IRS may call for more information about the return, enter the name, title, and telephone number of such person on lines 3a and 3b.



Complete lines 10a and 10b even if you complete lines 3a and 3b.

Part II—Type of Issue



Elections referred to in Part II are made on the original bond documents, not on this form.

Identify the type of bonds issued by entering the issue price in the box corresponding to the type of bond (see *Issue price* under *Definitions*, earlier). Attach a schedule listing names and EINs of organizations that are to use proceeds of these bonds, if different from those of the issuer, include a brief summary of the use and indicate whether or not such user is a governmental or nongovernmental entity.

Line 18. Enter a description of the issue in the space provided.

Line 19. If the bonds are short-term tax anticipation notes or warrants (TANs) or short-term revenue anticipation notes or warrants (RANs), check box 19a. If the bonds are short-term bond anticipation notes (BANs), issued with the expectation that they will be refunded with the proceeds of long-term bonds at some future date, check box 19b. Do not check both boxes.

Line 20. Check this box if property other than cash is exchanged for the bond, for example, acquiring a police car, a fire truck, or telephone equipment through a series of monthly payments. (This type of bond is sometimes referred to as a “municipal lease.”) Also check this box if real property is directly acquired in exchange for a bond to make periodic payments of interest and principal. **Do not** check this box if the proceeds of the bond are received in the form of cash, even if the term “lease” is used in the title of the issue.

Part III—Description of Bonds

Line 21. For column (a), the final maturity date is the last date the issuer must redeem the entire issue.

For column (b), see *Issue price* under *Definitions*, earlier.

For column (c), the stated redemption price at maturity of the entire issue is the sum of the stated redemption prices at maturity of each bond issued as part of the issue. For a lease or installment sale, write “N/A” in column (c).

For column (d), the weighted average maturity is the sum of the products of the issue price of each maturity and the number of years to maturity (determined separately for each maturity and by taking into account mandatory redemptions), divided by the issue price of the entire issue (from line 21, column (b)). For a lease or installment sale, enter instead the total number of years the lease or installment sale will be outstanding.

For column (e), the yield, as defined in section 148(h), is the discount rate that, when used to figure the present value of all payments of principal and interest to be paid on the bond, produces an amount equal to the purchase price, including accrued interest. See Regulations section 1.148-4 for specific rules to figure the yield on an issue. If the issue is a variable rate issue, write “VR” as the yield of the issue. For other than variable rate issues, carry the yield out to four decimal places (for example, 5.3125%). If the issue is a lease or installment sale, enter the effective rate of interest being paid.

Part IV—Uses of Proceeds of Bond Issue

For a lease or installment sale, write “N/A” in the space to the right of the title for Part IV.

Line 22. Enter the amount of proceeds that will be used to pay interest on the issue accruing prior to the date of issue. For definition of date of issue, see these instructions, line 7.

Line 24. Enter the amount of the proceeds that will be used to pay bond issuance costs, including fees for trustees and bond counsel. If no bond proceeds will be used to pay bond issuance costs, enter zero. Do not leave this line blank.

Line 25. Enter the amount of the proceeds that will be used to pay fees for credit enhancement that are taken into account in determining the yield on the issue for purposes of section 148(h) (for example, bond insurance premiums and certain fees for letters of credit).

Line 26. Enter the amount of proceeds that will be allocated to such a fund.

Line 27. Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any tax-exempt bonds, including proceeds that will be used to fund an escrow account for this purpose.

Line 28. Enter the amount of the proceeds that will be used to pay principal, interest, or call premium on any taxable bonds, including proceeds that will be used to fund an escrow account for this purpose.

Part V—Description of Refunded Bonds

Complete this part only if the bonds are to be used to refund a prior issue of tax-exempt bonds or taxable bonds. For a lease or installment sale, write “N/A” in the space to the right of the title for Part V.

Lines 31 and 32. The remaining weighted average maturity is determined without regard to the refunding. The weighted average maturity is determined

in the same manner as on line 21, column (d).

Line 34. If more than a single issue of tax-exempt bonds or taxable bonds will be refunded, enter the date of issue for each refunded issue. Enter the date in an MM/DD/YYYY format.

Part VI—Miscellaneous

Line 35. An allocation of volume cap is required if the nonqualified amount for the issue is more than \$15 million but is not more than the amount that would cause the issue to be private activity bonds.

Line 36. If any portion of the gross proceeds of the issue is or will be invested in a guaranteed investment contract (GIC), as defined in Regulations section 1.148-1(b), enter the amount of the gross proceeds so invested, as well as the final maturity date of the GIC and the name of the provider of such contract.

Line 37. If the issue is a pooled financing issue (as defined under *Pooled financing issue* in *Definitions*, earlier), enter the amount of the proceeds used to make loans to other governmental units, the interest on which is tax exempt.

Line 38. If the issue is a loan of proceeds from a pooled financing issue (as defined under *Pooled financing issue* in *Definitions*, earlier), check the box and where asked for the date of issue, EIN, and name of the issuer of the master pool bond, enter the date of issue, EIN, and name of the issuer of the pooled financing issue.

Line 40. Check this box if the issue is a construction issue and an irrevocable election to pay a penalty in lieu of arbitrage rebate has been made on or before the date the bonds were issued. The penalty is payable with a Form 8038-T for each 6-month period after the date the bonds are issued. Do not make any payment of penalty in lieu of arbitrage rebate with this form. See Rev. Proc. 92-22, 1992-1 C.B. 736, for rules regarding the “election document.”

Line 41a. Check this box if the issuer has identified a hedge on its books and records according to Regulations sections 1.148-4(h)(2)(viii) and 1.148-4(h)(5) that permit an issuer of tax-exempt bonds to identify a hedge for it to be included in yield calculations for figuring arbitrage.

Line 42. In determining if the issuer has super-integrated a hedge, apply the rules of Regulations section 1.148-4(h)(4). If the hedge is super-integrated, check the box.

Line 43. If the issuer takes a “deliberate action” after the issue date that causes the conditions of the private business tests or the private loan financing test to be met, then such issue is also an issue of private

activity bonds. Regulations section 1.141-2(d)(3) defines a deliberate action as any action taken by the issuer that is within its control regardless of whether there is intent to violate such tests. Regulations section 1.141-12 explains the conditions to taking remedial action that prevent an action that causes an issue to meet the private business tests or private loan financing test from being treated as a deliberate action. Check the box if the issuer has established written procedures to ensure timely remedial action for all nonqualified bonds according to Regulations section 1.141-12 or other remedial actions authorized by the Commissioner under Regulations section 1.141-12(h).

Line 44. Check the box if the issuer has established written procedures to monitor compliance with the arbitrage, yield restriction, and rebate requirements of section 148.

Line 45a. Check the box if some part of the proceeds was used to reimburse expenditures. Figure and then enter the amount of proceeds that are used to reimburse the issuer for amounts paid for a qualified purpose prior to the issuance of the bonds. See Regulations section 1.150-2.

Line 45b. An issuer must adopt an official intent to reimburse itself for preissuance expenditures within 60 days after payment of the original expenditure unless excepted by Regulations section 1.150-2(f). Enter the date the official intent was adopted. See Regulations section 1.150-2(e) for more information about official intent.

Signature and Consent

An authorized representative of the issuer must sign Form 8038-G and any applicable certification. Also print the

name and title of the person signing Form 8038-G. The authorized representative of the issuer signing this form must have the authority to consent to the disclosure of the issuer's return information, as necessary to process this return, to the person(s) that have been designated in Form 8038-G.

Note. If the issuer in Part I, lines 3a and 3b, authorizes the IRS to communicate (including in writing and by telephone) with a person other than an officer or other employee of the issuer, by signing this form, the issuer's authorized representative consents to the disclosure of the issuer's return information, as necessary to process this return, to such person.

Paid Preparer

If an authorized officer of the issuer filled in this return, the paid preparer's space should remain blank. Anyone who prepares the return but does not charge the organization should not sign the return. Certain others who prepare the return should not sign. For example, a regular, full-time employee of the issuer, such as a clerk, secretary, etc., should not sign.

Generally, anyone who is paid to prepare a return must sign it and fill in the other blanks in the *Paid Preparer Use Only* area of the return.

The paid preparer must:

- Sign the return in the space provided for the preparer's signature (a facsimile signature is acceptable),
- Enter the preparer information, and
- Give a copy of the return to the issuer.

Paperwork Reduction Act Notice. We ask for the information on this form to carry out the Internal Revenue laws of the

United States. You are required to give us the information. We need it to ensure that you are complying with these laws.

You are not required to provide the information requested on a form that is subject to the Paperwork Reduction Act unless the form displays a valid OMB control number. Books or records relating to a form or its instructions must be retained as long as their contents may become material in the administration of any Internal Revenue law. Generally, tax returns and return information are confidential, as required by section 6103.

The time needed to complete and file this form varies depending on individual circumstances. The estimated average time is:

Learning about the law or the form	2 hr., 41 min.
Preparing, copying, assembling, and sending the form to the IRS	3 hr., 3 min.

If you have comments concerning the accuracy of these time estimates or suggestions for making this form simpler, we would be happy to hear from you. You can send us comments through [IRS.gov/FormComments](https://www.irs.gov/FormComments).

Or you can write to:

Internal Revenue Service
Tax Forms and Publications
1111 Constitution Ave. NW, IR-6526
Washington, DC 20224

Do not send the form to this address. Instead, see *Where To File*, earlier.



ACCEPTANCE CERTIFICATE

De Lage Landen Public Finance LLC
1111 Old Eagle School Rd
Wayne, PA 19087

Ladies and Gentlemen:

Re: Lease Purchase Agreement dated as JULY 14, 2021 of between De Lage Landen Public Finance LLC, as Lessor, and City Of Aurora, as Lessee.

In accordance with the Lease Purchase Agreement (the "Agreement"), the undersigned Lessee hereby certifies and represents to, and agrees with Lessor as follows:

(1) All of the Property (as such term is defined in the Agreement) has been delivered, installed or is otherwise fully accessible by the Lessee and the Property is accepted on the date hereof.

(2) Lessee has conducted such inspection and/or testing of the Property as it deems necessary and appropriate and hereby acknowledges that it accepts the Property for all purposes.

(3) Lessee is currently maintaining the insurance coverage required by Section 7.02 of the Agreement.

(4) No event or condition that constitutes, or with notice or lapse of time, or both, would constitute, an Event of Default (as defined in the Agreement) exists at the date hereof.

LESSEE	Lessee Name <u>City Of Aurora</u>	
	Signature	Date
	Title	

19TEIA002Cv3

RESOLUTION NO. R2021-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA,
COLORADO, AUTHORIZING THE PURCHASE AND
ACQUISITION THROUGH A LEASE-PURCHASE AGREEMENT OF
VMWARE SOFTWARE LICENSING

WHEREAS, the City of Aurora, Colorado, (the “City”), is a home-rule municipality, organized and existing under Article XX, Section 6 of the Colorado Constitution and as such the City has authority to legislate and regulate its local affairs; and

WHEREAS, the Director of Information and Technology of the City (the “Director”) has identified and negotiated a Lease Agreement (the “Agreement”) to purchase software to maintain the City’s technology infrastructure; and

WHEREAS, it is the role of the City Council of the City to authorize the purchase and lease of property to provide for the needs of the City’s technological infrastructure and to that effect the City has appropriated sufficient sums to cover the cost of the initial lease payments; and

WHEREAS, the City Council finds and determines that it is in the best interests of the City and its citizens to authorize the Director to purchase the equipment needed for the purposes established in this resolution.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Council hereby authorizes the Director to enter into a Lease Purchase Agreement, subject to annual appropriation, for the lease and purchase of the necessary equipment and/or software to cover the City’s needs for the City’s technology infrastructure. The Agreement is hereby attached to this resolution as Exhibit A, presented at this meeting, and is hereby approved with such technical additions, deletions, and variations as the City Attorney may deem necessary or appropriate and not inconsistent with this Resolution.

Section 2. All resolutions or parts of resolutions of the City of Aurora, Colorado, in conflict herewith are hereby rescinded.

Section 3. Any reconsideration of this Resolution by the City Council of the City is hereby waived.

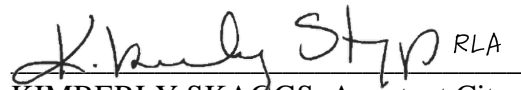
RESOLVED AND PASSED this _____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

^{RLA}
KIMBERLY SKAGGS, Assistant City Attorney



CITY OF AURORA

Council Agenda Commentary

Item Title: A Resolution to Approve the Aesthetic Enhancements for the Nine Mile Pedestrian Bridge
Item Initiator: Roberta Bloom, Public Art Supervisor
Staff Source/Legal Source: Roberta Bloom, Public Art Supervisor; Tim Joyce, Assistant City Attorney
Outside Speaker: None
Council Goal: 2012: 4.0--Create a superior quality of life for residents making the city a desirable place to live and work

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

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

Why is a waiver needed? To avoid project delays and help in coordination with overall bridge project.

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Public Relations, Communications, Tourism, Libraries, Boards and Commissions & Citizen Groups

Policy Committee Date: 7/30/2021

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

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

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

1/28/2021 – Initial Meeting of Art Selection Panel, finalization of RFQ, presentation of 12 qualified artists, selection of five finalists to invite for virtual interviews

2/27/2021 – Second Meeting of Art Selection panel, presentations by 5 finalists, selection of Vicki Scuri as recommended artist by the Art Selection Panel

3/3/2021 – Art in Public Places Commission approves Vicki Scuri, and a contract for design is implemented, enabling her to join the Nine Mile Pedestrian Bridge Design Team

6/11/2021 – Bridge Design Charette for the full bridge project is presented to key stakeholders. Core values were identified to be: Mobility (10 pts.), Aesthetics (9 pts.) and Safety (9 pts.). Also a preference was articulated for the arch design rather than the simple truss. Vicki presented her initial concept based on input gathered through Engage Aurora and it was met with enthusiasm.

7/7/2021 – Third Meeting of the Art Selection Panel – Vicki presented formal design and budget that had been previewed by the Design Team and determined to be within the realm of feasibility. The proposal received unanimous support from the Art Selection Panel.

7/7/2021 – Art in Public Places Commission reviewed the proposal and unanimously approved it. (draft minutes attached)

7/8/2021 – Cultural Affairs Commission reviewed the proposal and unanimously approved it. (draft minutes attached)

7/30/2021 – Public Relations, Communications, Tourism, Libraries, Boards and Commissions & Citizen Groups reviewed the proposal and moved it to the August 16 study session with their full recommendation.

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

The Art in Public Places Commission (AIPPC) recommended allocating up to \$250,000 from the Public Art Reserve fund to create a “gateway” and welcoming project for the Nine Mile Pedestrian Bridge. This bridge has been long awaited and has been anticipated as a key site for public art within the city. The AIPPC appreciates the opportunity to work with the Aurora Urban Renewal Authority to help remedy blight situations throughout the city.

An invitational art selection process was used due to the special expertise and complexities related to creating artwork on bridges and transportation projects, and also to accommodate the the timeline of the overall bridge project. Bridge Project Manager Bret Banwart worked with AIPP Staff to develop a plan for integrating art concepts, assisted in the development of the RFQ, participated in decisions related to participants on the art selection panel, and served as an active member of the art selection panel including selection of the artist, and approval of design and budget as presented.

Other members of the Art Selection Panel included Council Members Marcano and Coombs; AIPP Commissioner Mary Molicone with back-up from Commissioners Ana Valles and Jesse Jimenez; Community members donnie i. betts and Veronica Thighe; Artist David Griggs; and key stakeholders Eva Mather (representing The Point), Chad Argentar (representing AURA), and Christina Zazueta (representing RTD.)

Due to the pandemic which made in-person public engagement impossible, AIPP staff worked with the artist to connect with the community through the Engage Aurora Website. People could complete a short survey and offer other input through the site. This input helped to fuel the artist’s creative process and design development. The resulting concept focuses on connecting through nature in the urban environment and brings together the colors of the prairie and the sky, the movement and gesture of native grasses, and celebrates Aurora’s diversity through words that were commonly used in the Engage Aurora responses.

The proposal involves:

- 1.) Upgrading the bridge cladding from LEXAN, which is only available in a few neutral colors, to KODA XT, a highly durable polycarbonate that is available in 250 colors and is translucent. The colors selected, and pattern, are intended to represent the palette of the prairie and sky. The colorful bridge will be enjoyed by

those driving by/under, pedestrians on the street, those using the bridge, and the neighborhood as a whole. The KODA KT will also create colorful shadows within the bridge.

- 2.) Bridge grills created using laser cut steel using patterns the artist created that are derived from native grasses. These will be powder coated. The grills will be installed below the KODA XT, creating beautiful shadow play on the bridge floor as well as visual detail and texture that will be visible from outside the bridge. Smaller grills will be installed in the clerestory for ventilation.
- 3.) The artist/designer compiled a list of words most often used in the comments gathered through Engage Aurora. These words will be stenciled inside the bridge and presented in English as well as in the five most commonly used languages in Aurora: Spanish, Korean, Vietnamese, Chinese and Amharic.

Other input from the Vicki Scuri has included the suggestion to change the roof design from a traditional peaked roof to a shed roof with a clerestory, which creates more daylight on the bridge.

The initial design contract to the artist was for \$48,000.

The budget for fabrication and installation presented is for \$175,00 and this will be finalized through construction documents and bids as the fabrication and installation will be implemented through the bridge construction process. Funding may cover some small additional aesthetic elements but that will not be known until bids are received, reviewed, and accepted. The bridge, itself, is still in conceptual design development.

The artist/designer will receive a contract for \$27,000 for project management and oversight including review and approval of materials, fabrication, and installation, through anticipated completion of the bridge in Spring of 2023. The new Scope of Work (attached in draft form) will be added to the current professional services agreement.

QUESTIONS FOR COUNCIL

Does City Council approve moving this project forward to the next City Council Meeting?

LEGAL COMMENTS

City Code requires all construction, rehabilitation, or improvements of any public building, street, park or other public improvement within the City with a construction cost of \$100,000 or more to reserve one-percent of the construction cost to be placed in the art in public places reserve account. The reserve account is used to acquire works of art to be added to the City's art collection. (City Code section 34-128). The Art in Public Places Commission must approve an art project proposal and make recommendations through the Cultural Affairs Commission to City Council for art projects costing more than \$50,000. City Council must approve all art projects costing more than \$50,000. (City Code section 34-131) (TJoyce)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: The expenditure of \$200,000 out of the AIPP Reserve Fund over 2021, 2022, and 2023.

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain:

RESOLUTION NO. R2021-___

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, TO APPROVE THE DESIGN, FABRICATION AND INSTALLATION OF THE AESTHETIC ENHANCEMENTS FOR THE NINE MILE PEDESTRIAN AND BICYCLE BRIDGE PROJECT

WHEREAS, the City desires to incorporate design elements known as aesthetic enhancements into the design and structure of the Nine Mile pedestrian and bicycle bridge project; and

WHEREAS, Artist/Designer Vicki Scuri has worked with the City's Art in Public Places Program Supervisor, the City's Public Works Department, and the Nine Mile Pedestrian and Bicycle Bridge Design Team to design aesthetic enhancements to be incorporated into the Nine Mile pedestrian and bicycle bridge project; and

WHEREAS, the Art Selection Panel unanimously approved the aesthetic enhancements proposal for this project; and

WHEREAS, the Art in Public Places Commission unanimously has approved the aesthetic enhancement proposal for his project; and

WHEREAS, the Cultural Affairs Commission approved the aesthetic enhancements proposal for this project on July 14, 2021; and

WHEREAS, the cost of fabricating and installing of the design enhancements for the Nine Mile pedestrian and bicycle bridge project is \$175,000; and

WHEREAS, the cost of the artist's project management and oversight through final materials selection, fabrication, and installation is \$25,000; and

WHEREAS, the aesthetic enhancements design proposed for the project is attached to this agenda item as an Attachment; and

WHEREAS, City Code § 34-131 requires public art projects costing \$50,000 or more to be submitted individually through the Cultural Affairs Commission to City Council for approval before the work is commissioned.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, THAT:

Section 1. City Council approves the aesthetic enhancements design submitted by Artist/Designer Vicki Scuri and approves the agreement for the fabrication and installation of the aesthetic enhancements into the Nine Mile pedestrian and bicycle bridge project.

Section 2. This resolution shall take effect immediately without reconsideration.

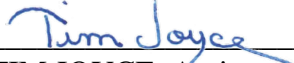
RESOLVED AND PASSED this _____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

 RLA

TIM JOYCE, Assistant City Attorney

The background of the slide is a close-up photograph of tall, slender grasses, likely reeds or sedges, with a soft, slightly blurred effect. The grasses are in various shades of green and yellow, creating a textured, natural backdrop.

Nine Mile Bridge Aesthetic Enhancement Concept Images

Vicki Scuri SiteWorks

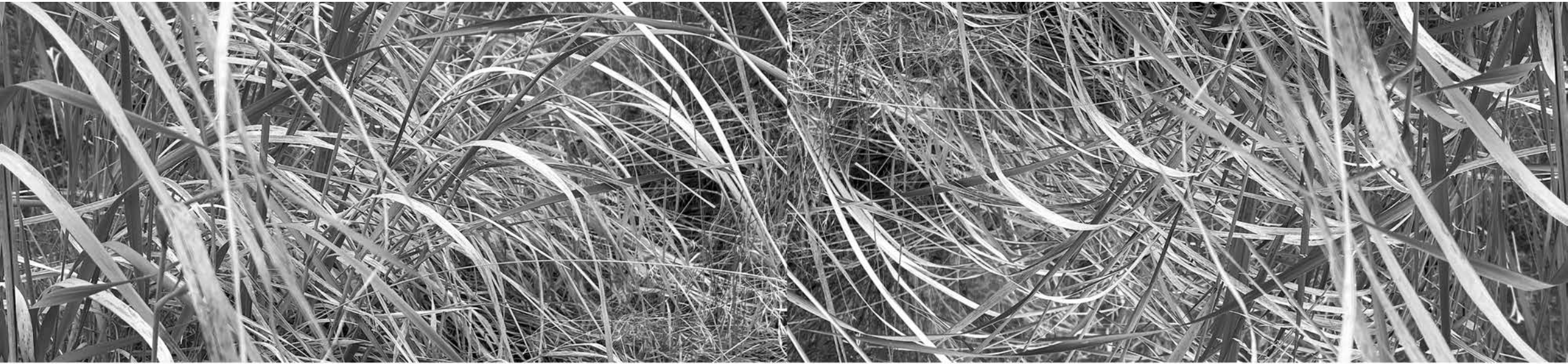
July 15, 2021

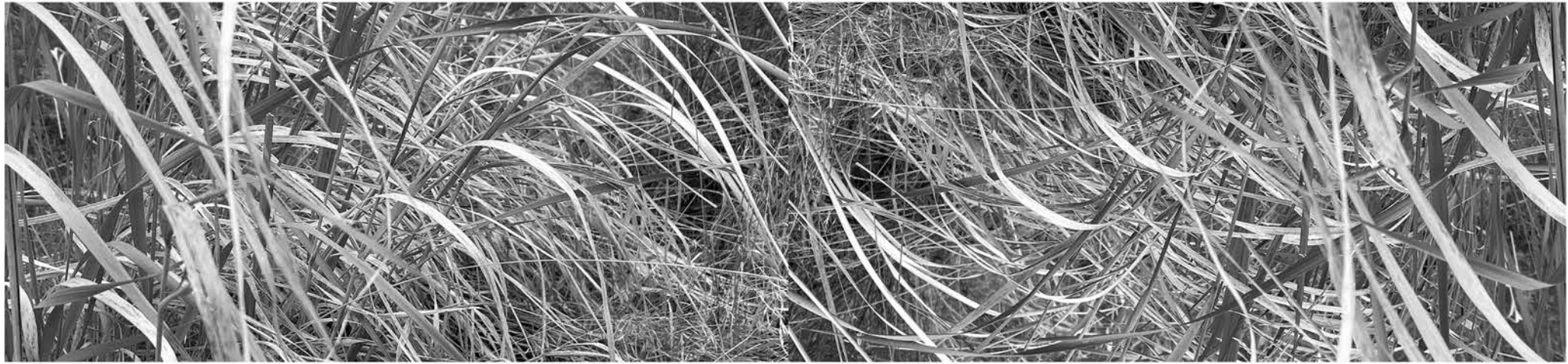


Prairie Grass Conceptual Patterning

Inspired by Engage Aurora Comments and Local Landscape







Preferred Glazing Material: Koda XT

“Koda XT

Colored Crazy Strong

Incredibly durable polycarbonate resin panels. Koda XT is an awesome alternative to glass that brings design, durability, and translucency to projects that require exterior applications.

Take the Test of Time

Create with Koda XT

Add a variety of finishes for scratch-resistance or translucency, color it with a hue from its designated palette, and play with its available effects.

250 Colors

One System

The 3form Color Portfolio is a comprehensive collection of translucent colors for design applications. Combine any hue with our Whites, Diffusions, Interlayers, and Effects to create something entirely yours.”

Robin



Kilt



Tropical



Chirp



Golden



Lago



Cilantro



Turtle



Daisy



Giraffe



Alternate Glazing Material: LEXAN

“LEXAN™ SOLID SHEET

SABIC’s LEXAN™ Sheet portfolio of monolithic products help customers develop lightweight, durable parts with tailor-made performance across a wide variety of industries.

Based on high-performance LEXAN™ resin which is a polycarbonate (PC) material. SABIC’s engineering plastics solid sheet portfolio helps customers develop lightweight, durable parts with tailor-made performance across a wide variety of industries. These include aerospace, transportation, electrical and electronics, building and construction, material handling, telecommunications and industrial machines industries, among others.”

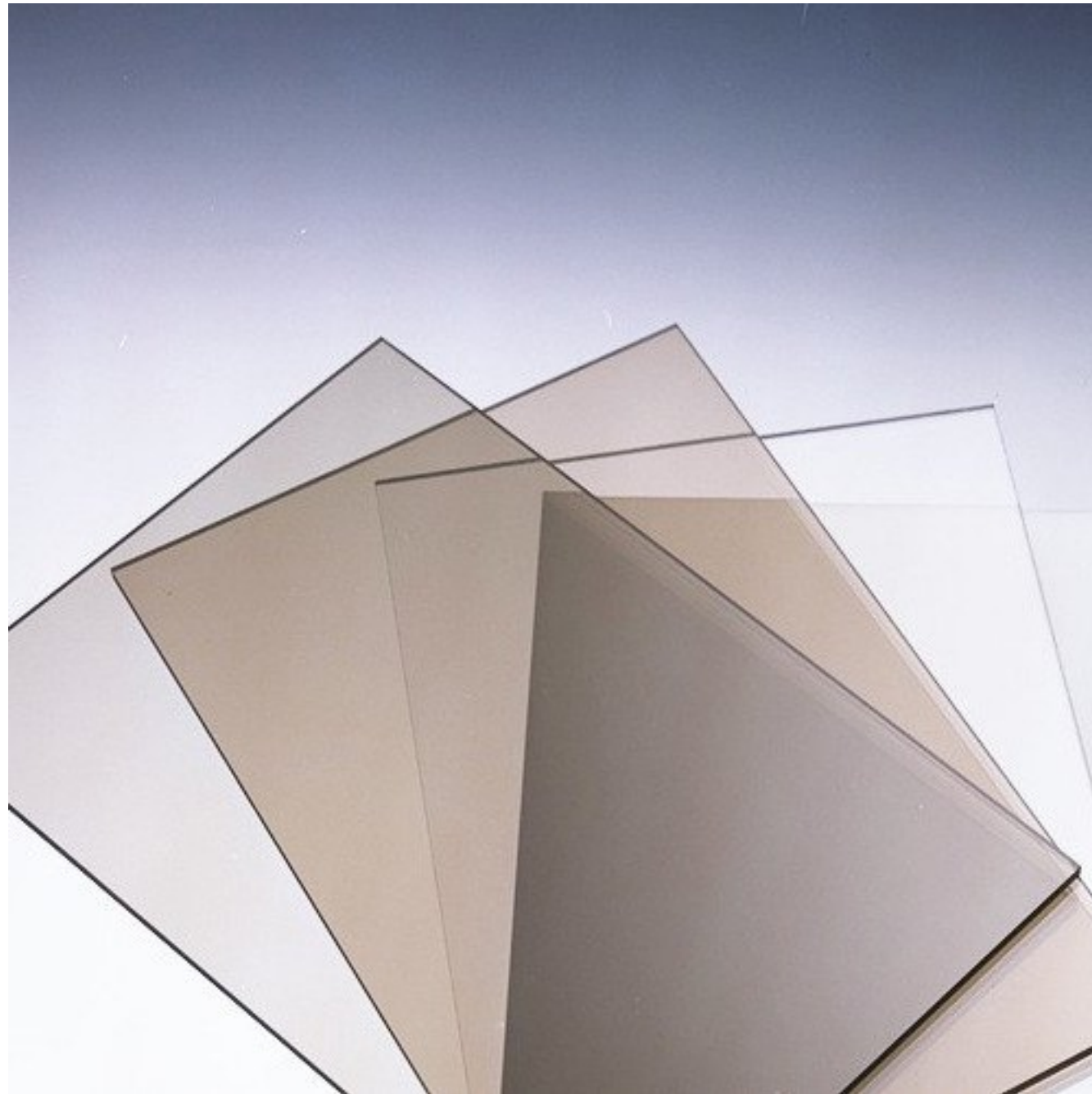
LEXAN Stock Colors:

Gray
(Selected)

Bronze

Clear

White



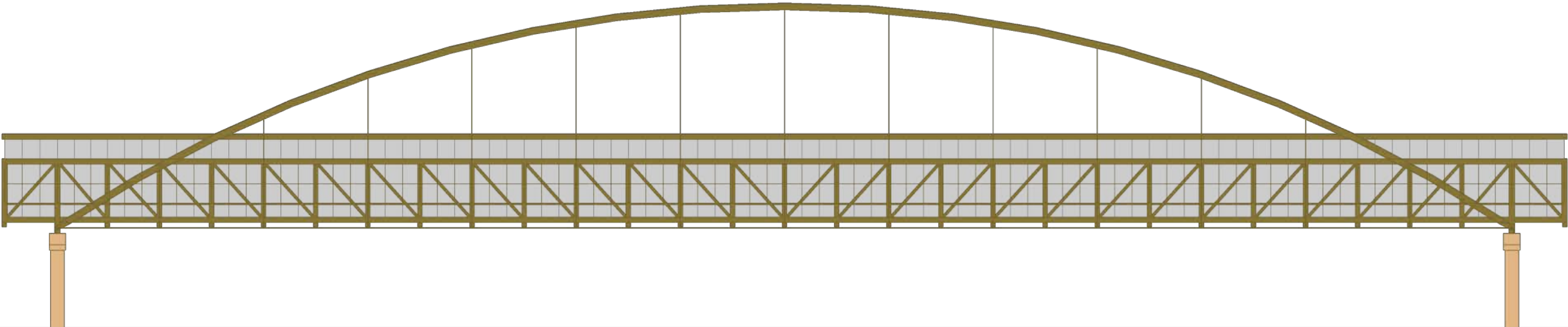
The background of the slide is a dense field of tall, green grasses, possibly reeds or similar aquatic plants, with long, narrow leaves. The image is slightly blurred and has a soft, natural light quality.

Conceptual Elevations

Bridge Basics and Enhanced, augmented through the Arts Budget

.5" LEXAN, UV COATED TO PREVENT CLOUDING (OPACITY): Engineer's Bridge Estimate \$440,000 + 10% = \$483,783

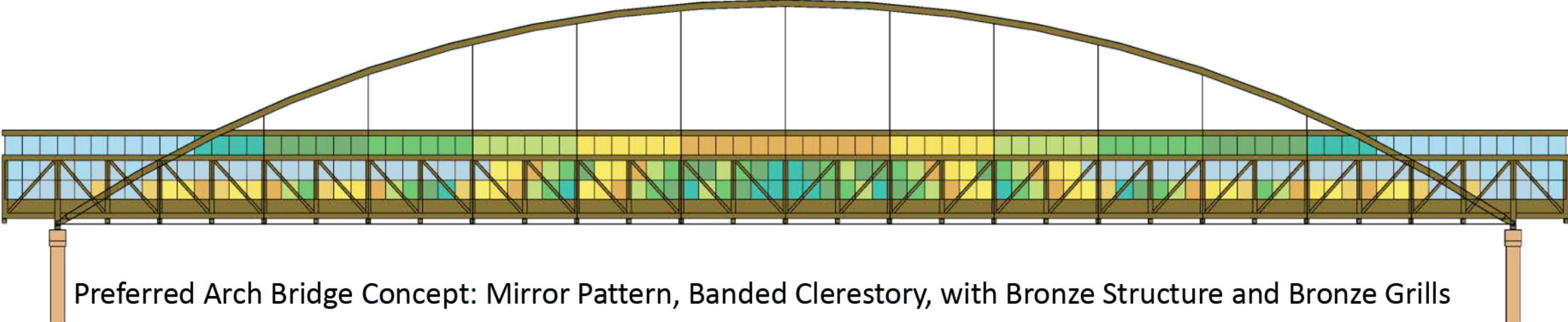
<https://www.eplastics.com/polycarbonate/sheets/abrasion-uv-resistant/PCCLR0-500AR248X96>



See page 52 for Layout Information on 4'x8' Sheets

This module does not fit the bridge grid by using 4'x8' sheets directly placed into the Bridge Structural Grid/Truss matrix. The sheet size requires a similar frame to KodaXT to fit the Truss. The installation cost is nearly identical for both options.

.5" KODA XT: Engineer's Estimate: \$147,000 + 10% = \$162,000



7

See page 52 for Layout Information on 4'x8' Sheets
This module does not fit the bridge grid by using 4'x8' sheets directly placed into the Bridge Structural Grid/Truss matrix. The sheet size requires a similar frame to KodaXT to fit the Truss. The installation cost is nearly identical for both options.

Single Span Tied Arch Bridge

This selected option replaces all of the Lexan on the bridge with KodaXT, creating a colorful passageway and a new landmark. The selected hues connect human nature and the site with the natural world of the sky and the prairie, celebrating Aurora's regional landscape. The public's comments shared on Engage Aurora inspired this approach.



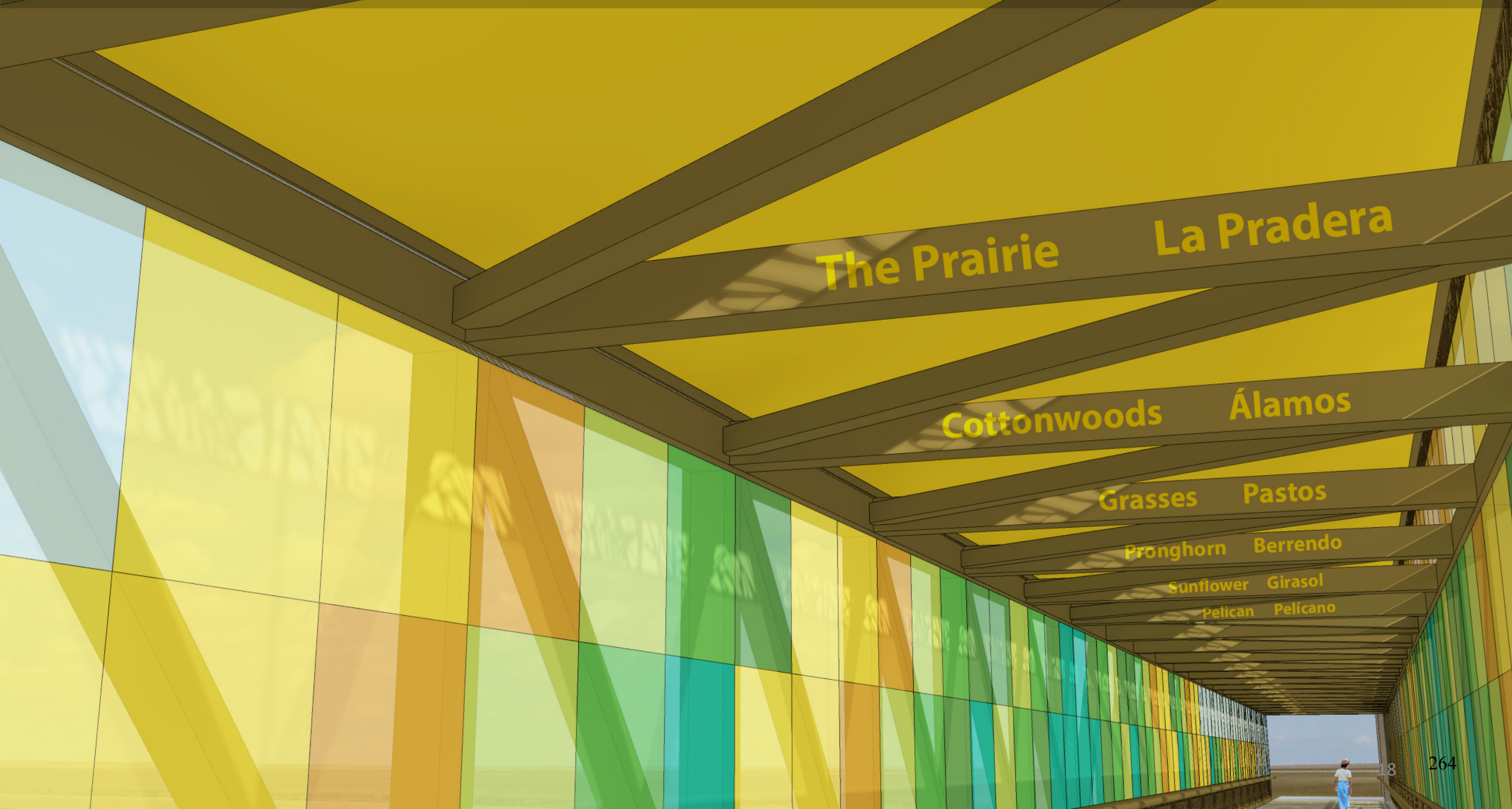


AFTERNOON – LOOKING NORTH & UP – FROM RTD TO THE POINT – AT ¼ WAY ACROSS BRIDGE



AFTERNOON – LOOKING NORTH – FROM RTD TO THE POINT – AT ½ WAY ACROSS BRIDGE





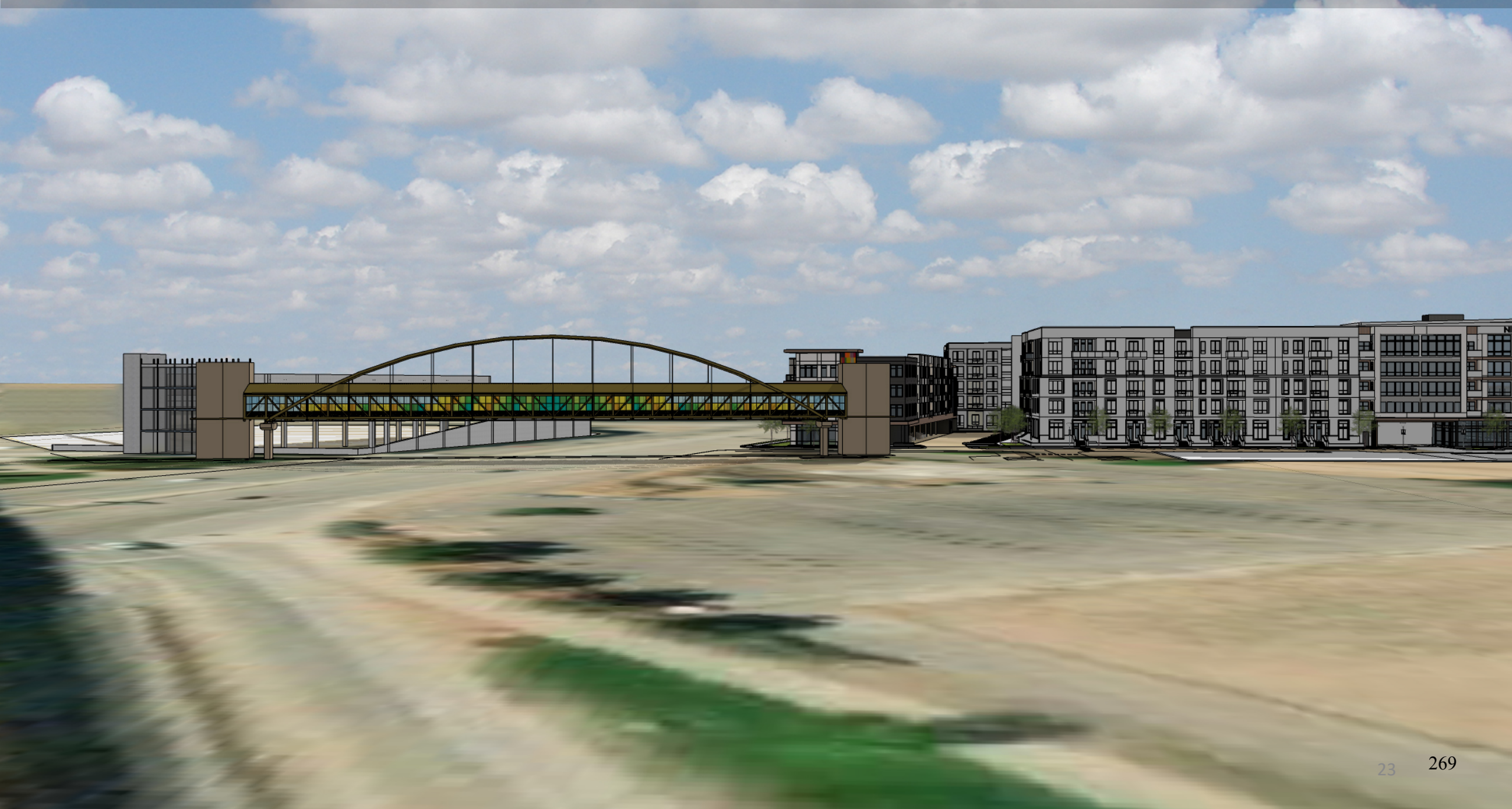
AFTERNOON – LOOKING NORTH FROM RTD












A field of yellow wildflowers with a semi-transparent text overlay. The flowers are in various stages of bloom, with some showing their dark brown centers. The background is a soft, out-of-focus green and yellow.

Comments and Questions
Thank You

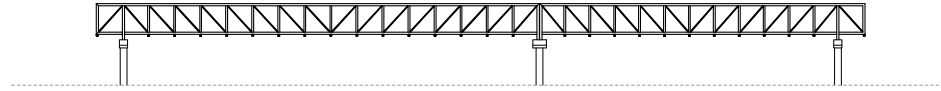


APPENDIX

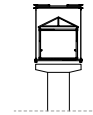
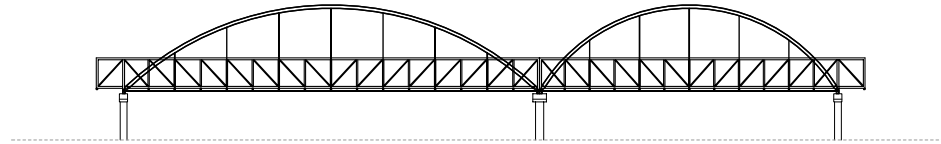
Nine Mile Bridge Concept Studies

These additional drawings demonstrate our conceptual approach to creative problem solving.

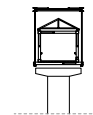
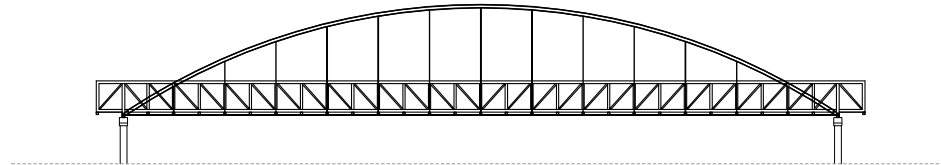
Bridge Span Options



TWO SPAN TRUSS
(LOOKING EAST)



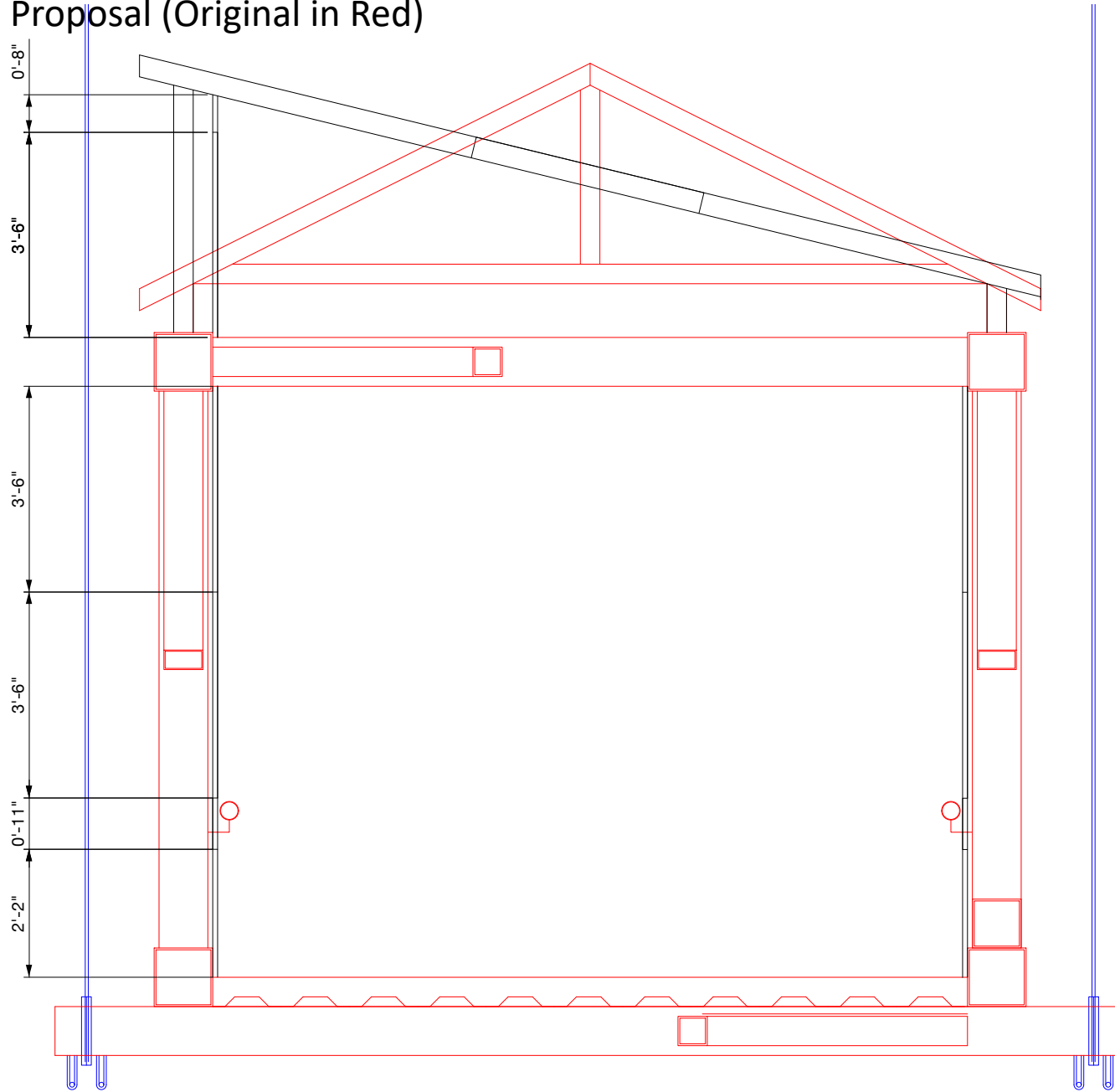
TWO SPAN TIED ARCH
(LOOKING EAST)



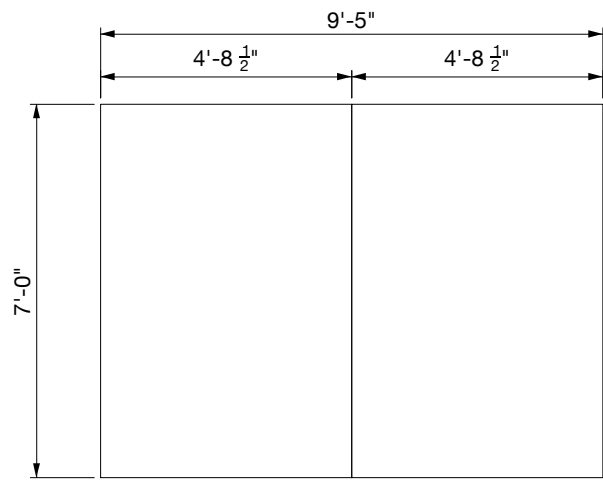
SINGLE SPAN TIED ARCH
(LOOKING EAST)

Shed Roof Concept Proposal (Original in Red)

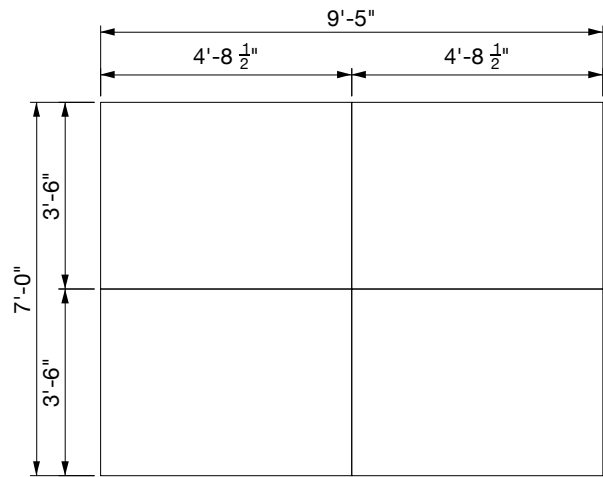
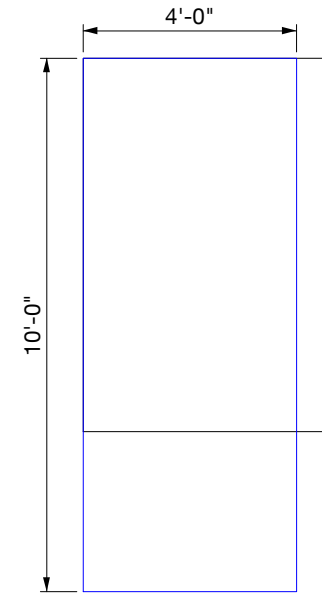
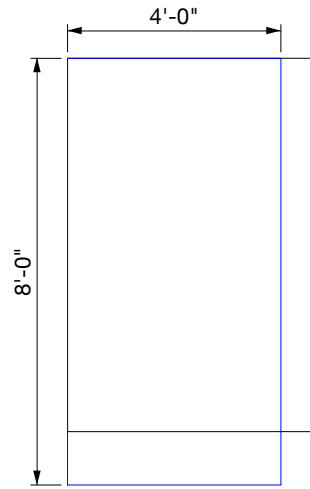
South
West
Side



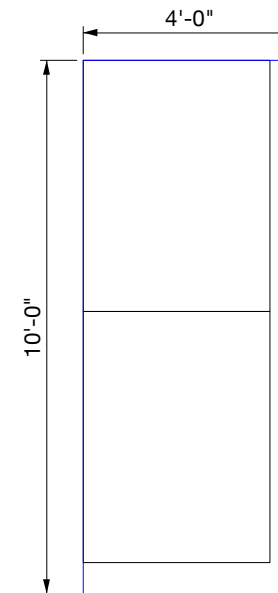
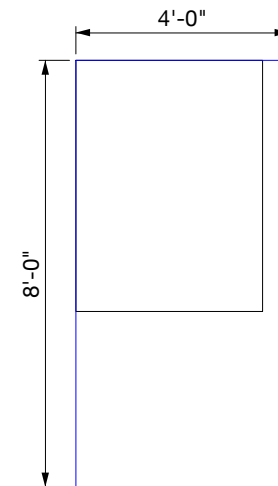
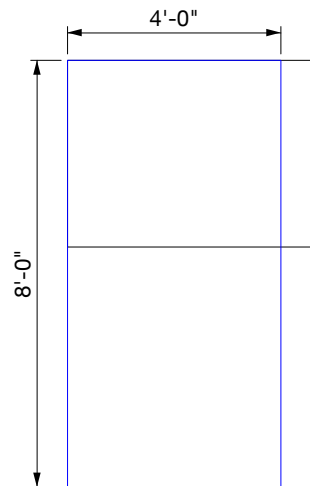
North
East
Side

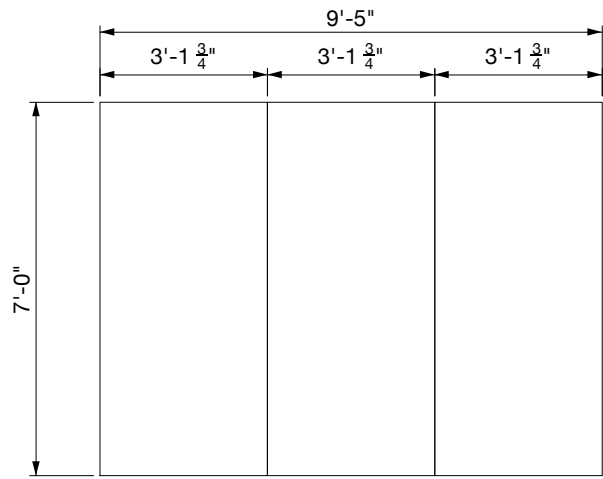


Half Size does not fit on either a 4'x8' or a 4'x10' sheet

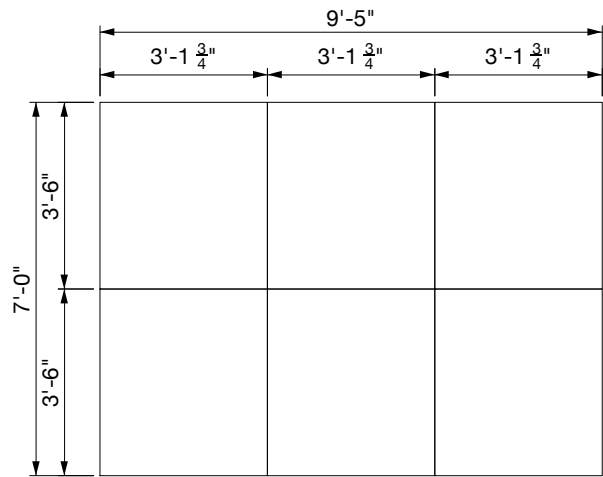
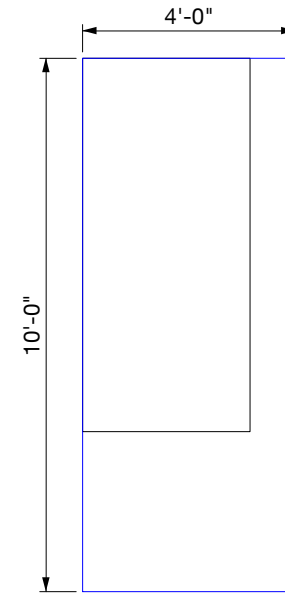
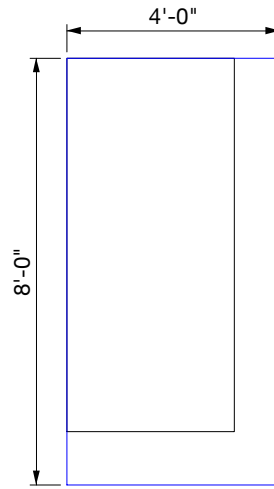


Quarter Size fits one to a 4'x8' sheet, when rotated, and two on a 4'x10' sheet

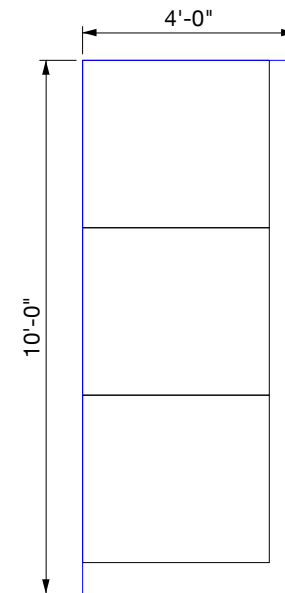
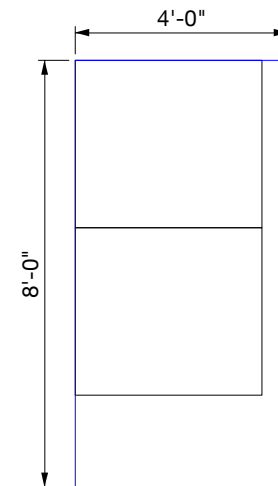
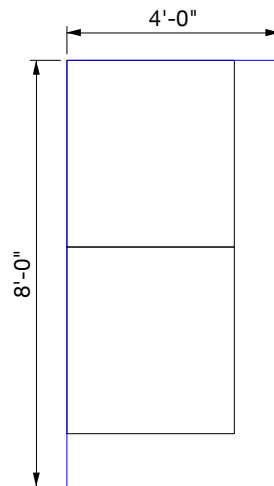




Third Size fits one to a sheet on either a 4'x8' or a 4'x10' sheet



Sixth Size fits two on a 4'x8' sheet and, when rotated, three on a 4'x10' sheet

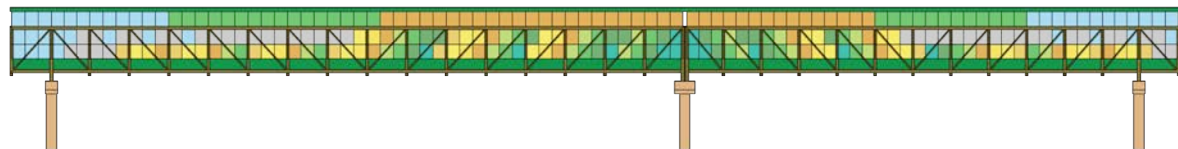
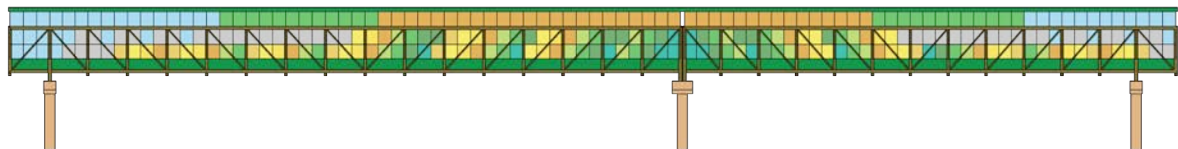
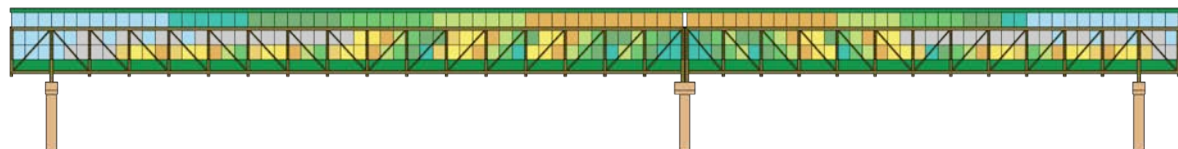
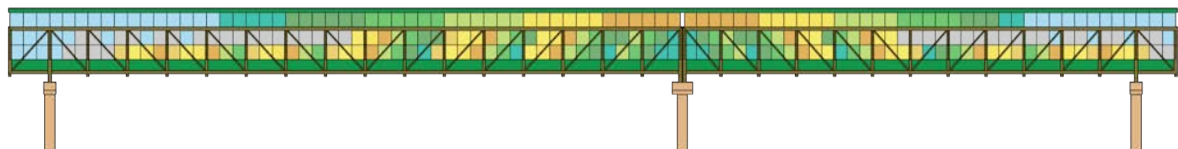
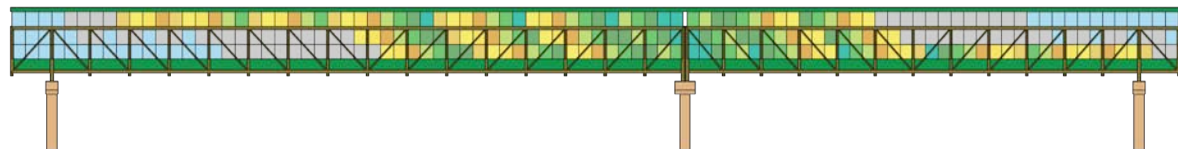
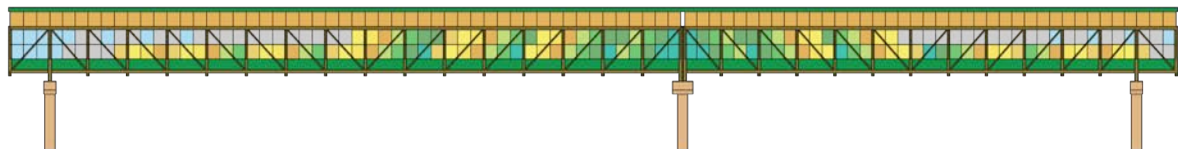
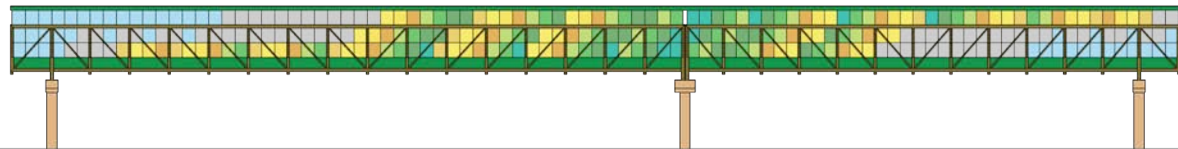
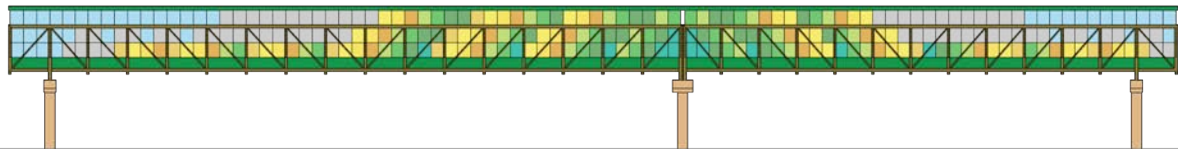


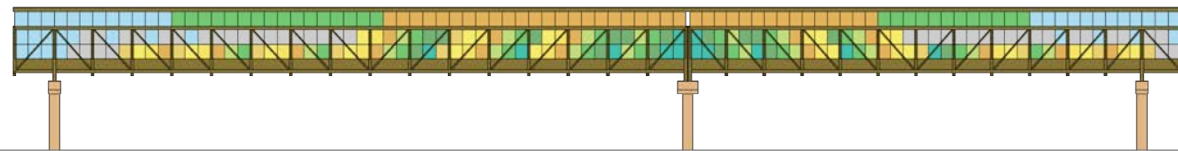
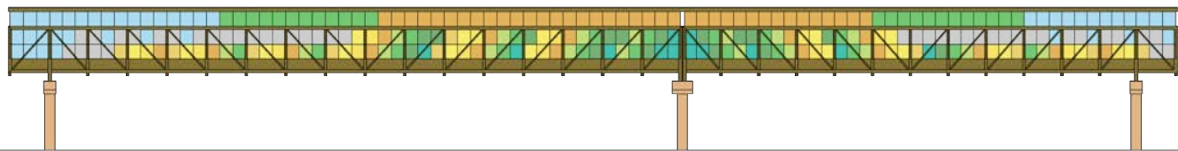
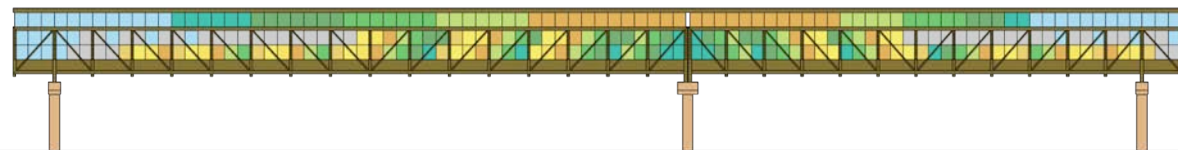
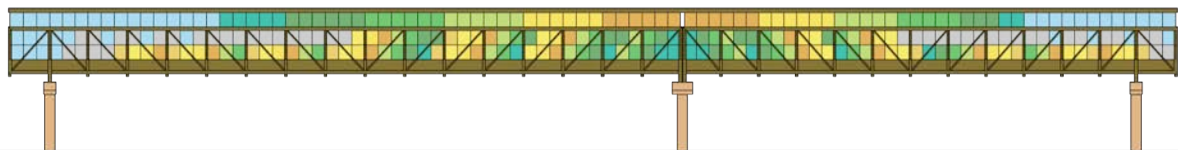
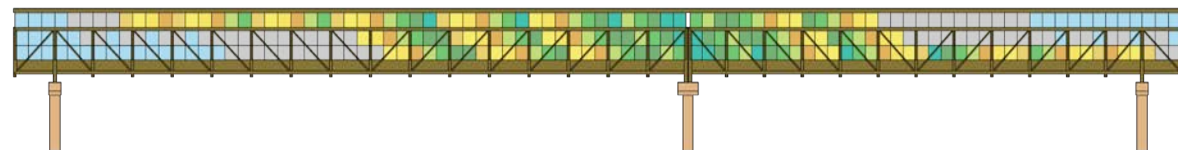
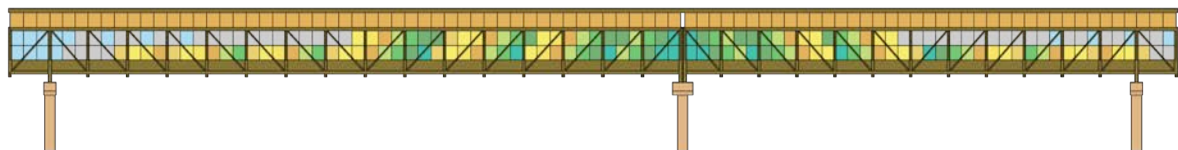
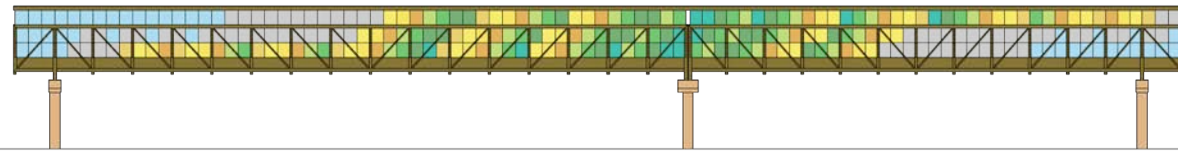
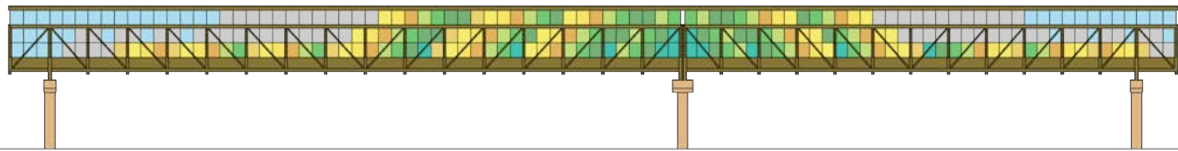
Straight Bridge Color Studies

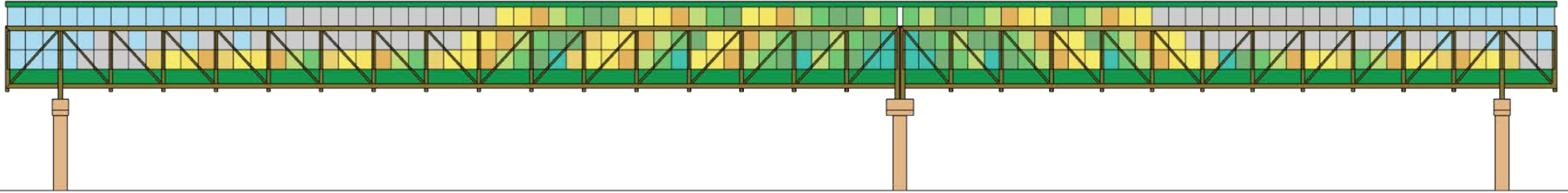
Two Span Truss

—

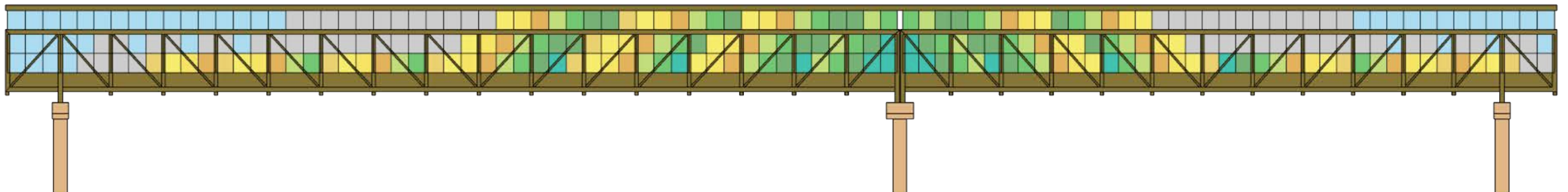
All Views Looking East







Preferred Strait Bridge Concept: Asymmetrical Mirror Pattern with Bronze Structure and Green Grills



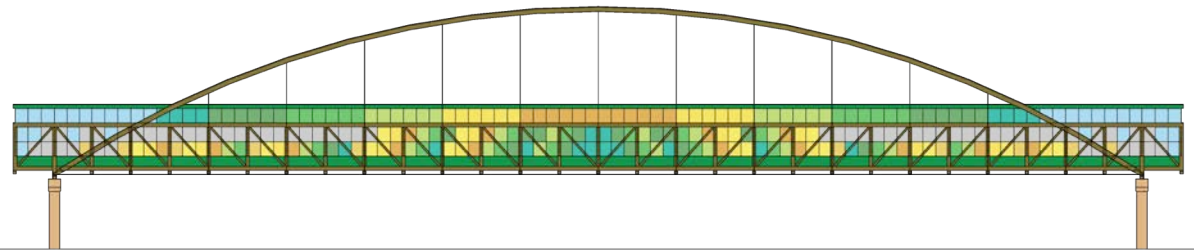
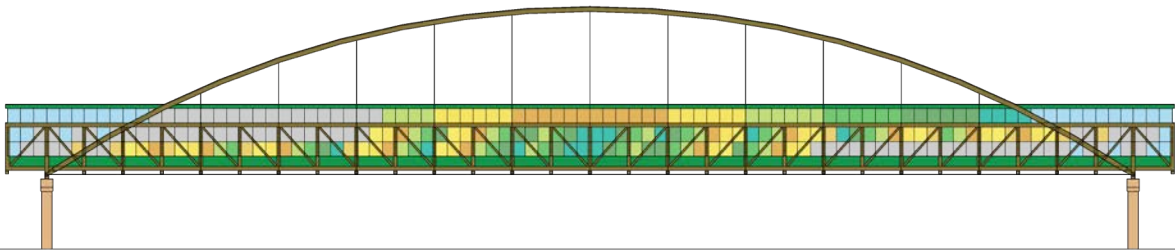
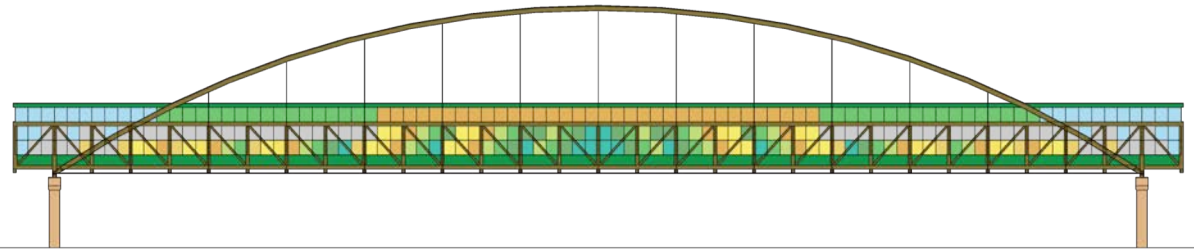
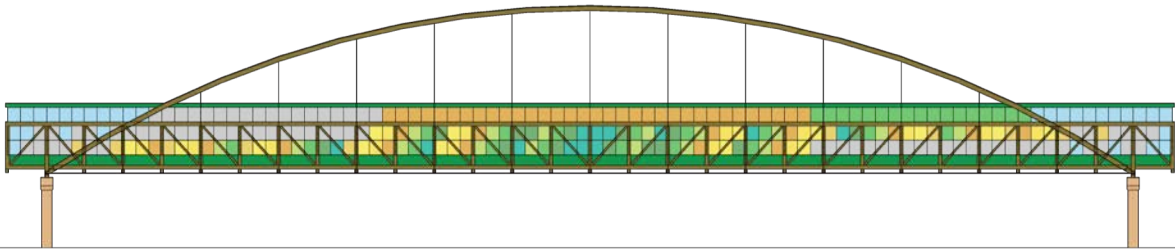
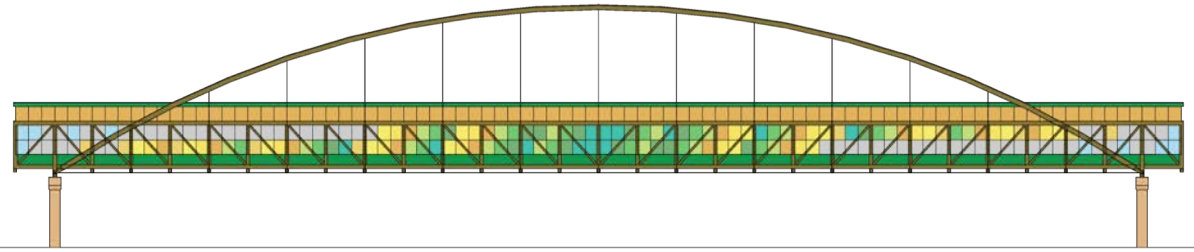
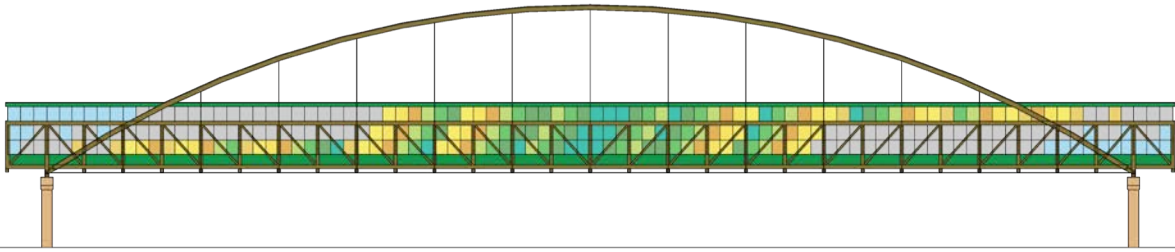
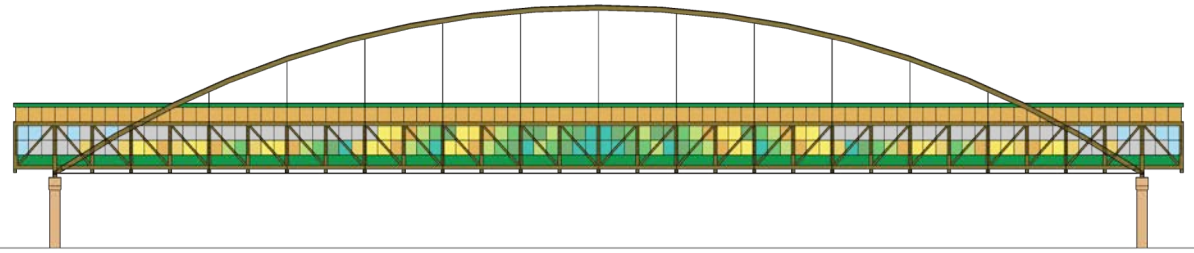
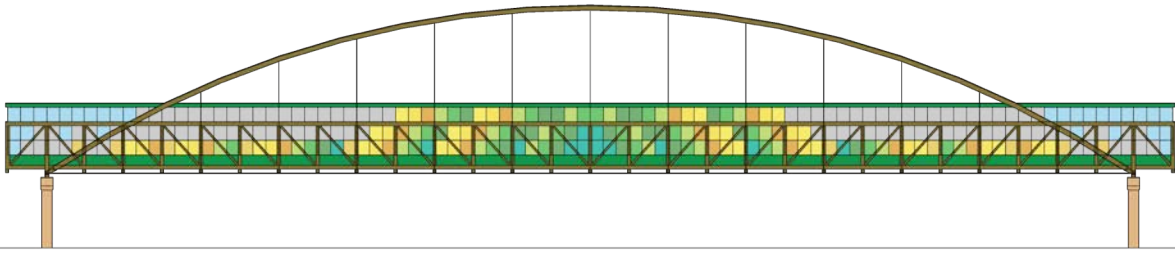
Alternate Strait Bridge Concept: Asymmetrical Mirror Pattern with Bronze Structure and Bronze Grills

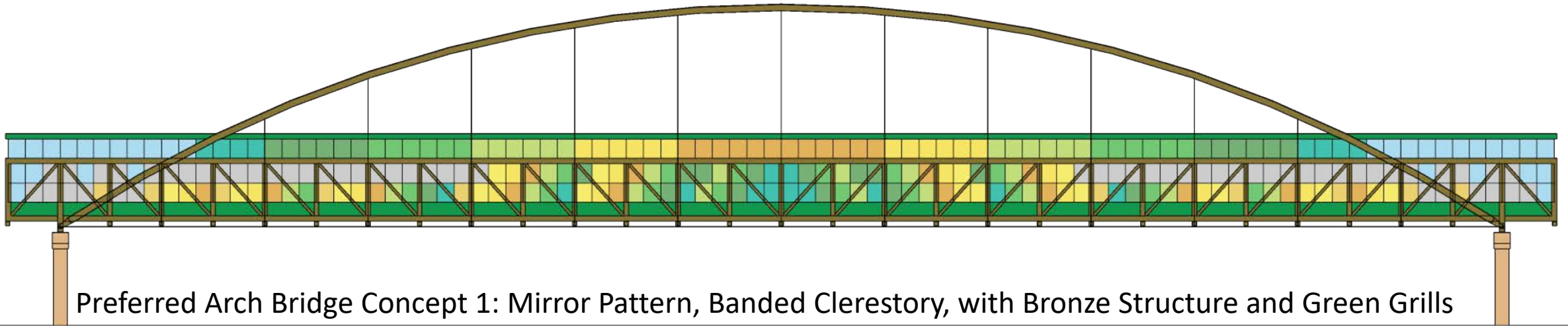
Arch Bridge Color Studies

Single Span Tied Arch

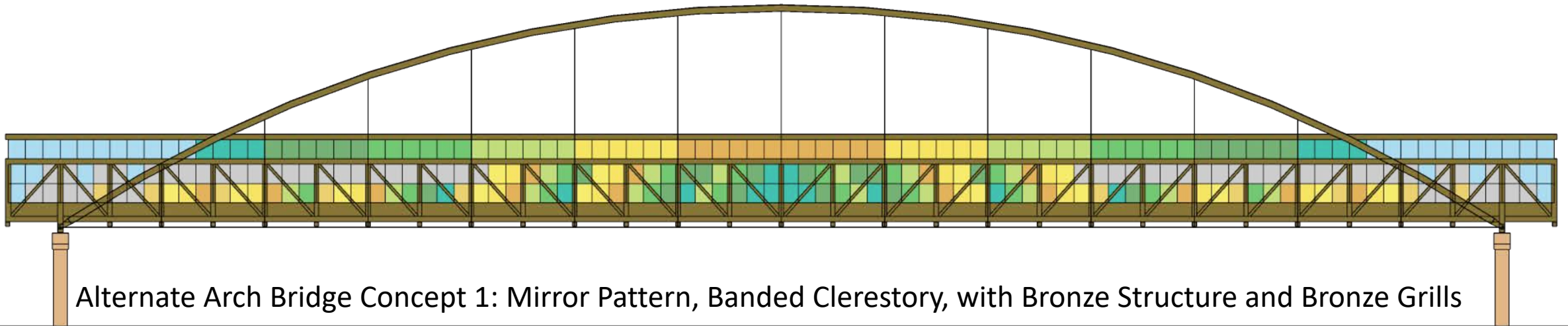
—

All Views Looking East

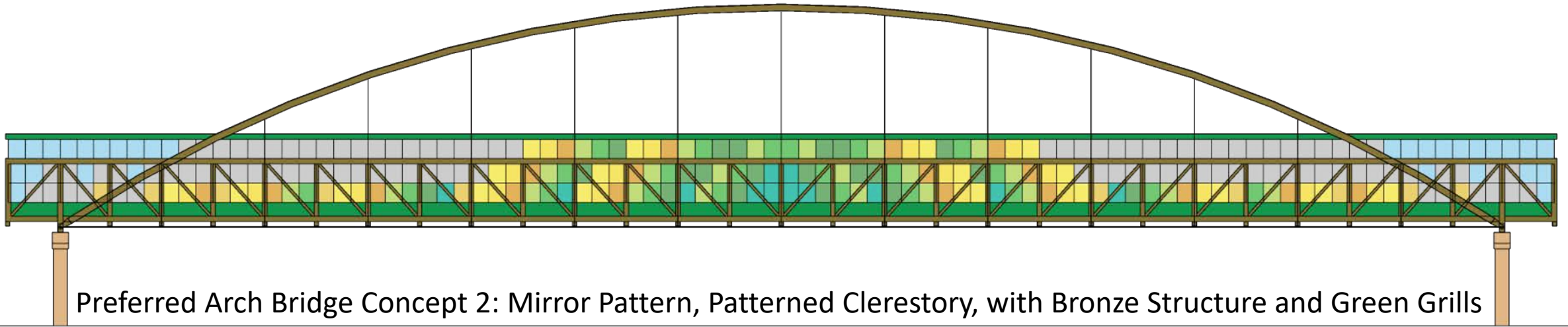




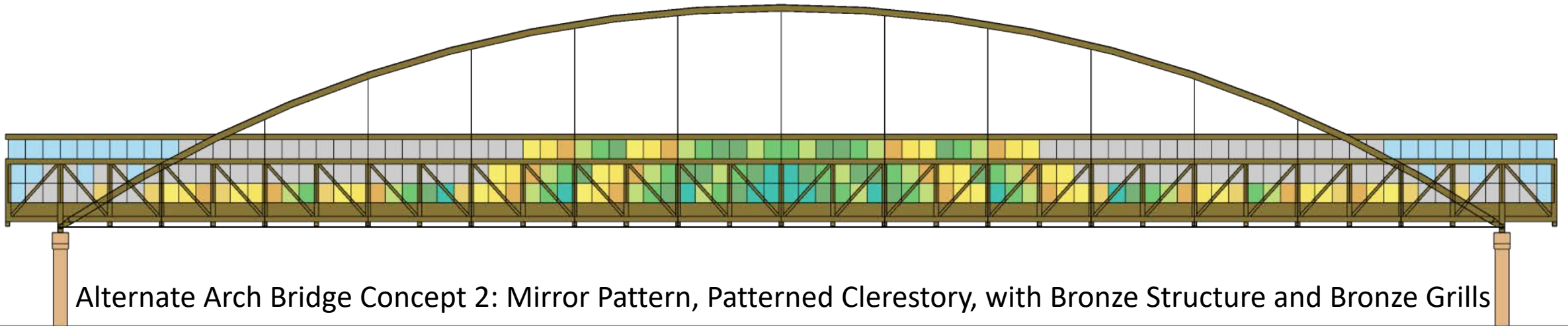
Preferred Arch Bridge Concept 1: Mirror Pattern, Banded Clerestory, with Bronze Structure and Green Grills



Alternate Arch Bridge Concept 1: Mirror Pattern, Banded Clerestory, with Bronze Structure and Bronze Grills



Preferred Arch Bridge Concept 2: Mirror Pattern, Patterned Clerestory, with Bronze Structure and Green Grills

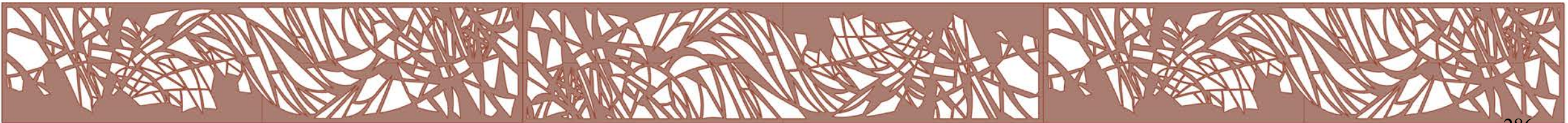
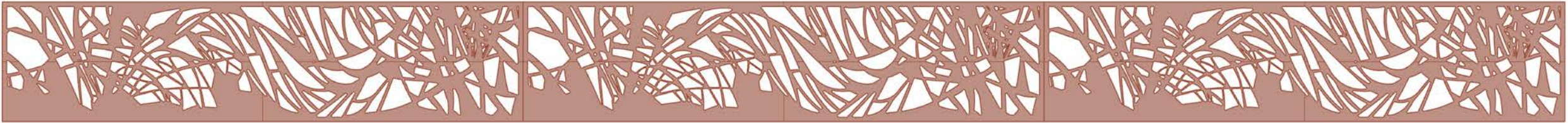
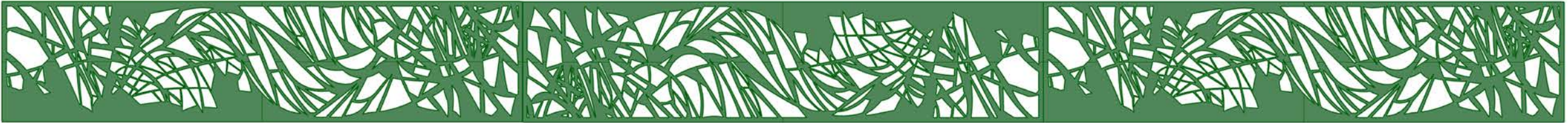
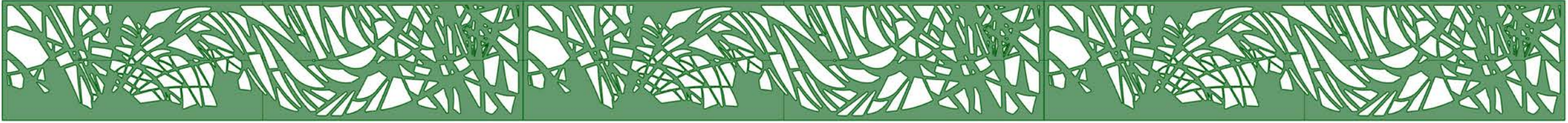


Alternate Arch Bridge Concept 2: Mirror Pattern, Patterned Clerestory, with Bronze Structure and Bronze Grills

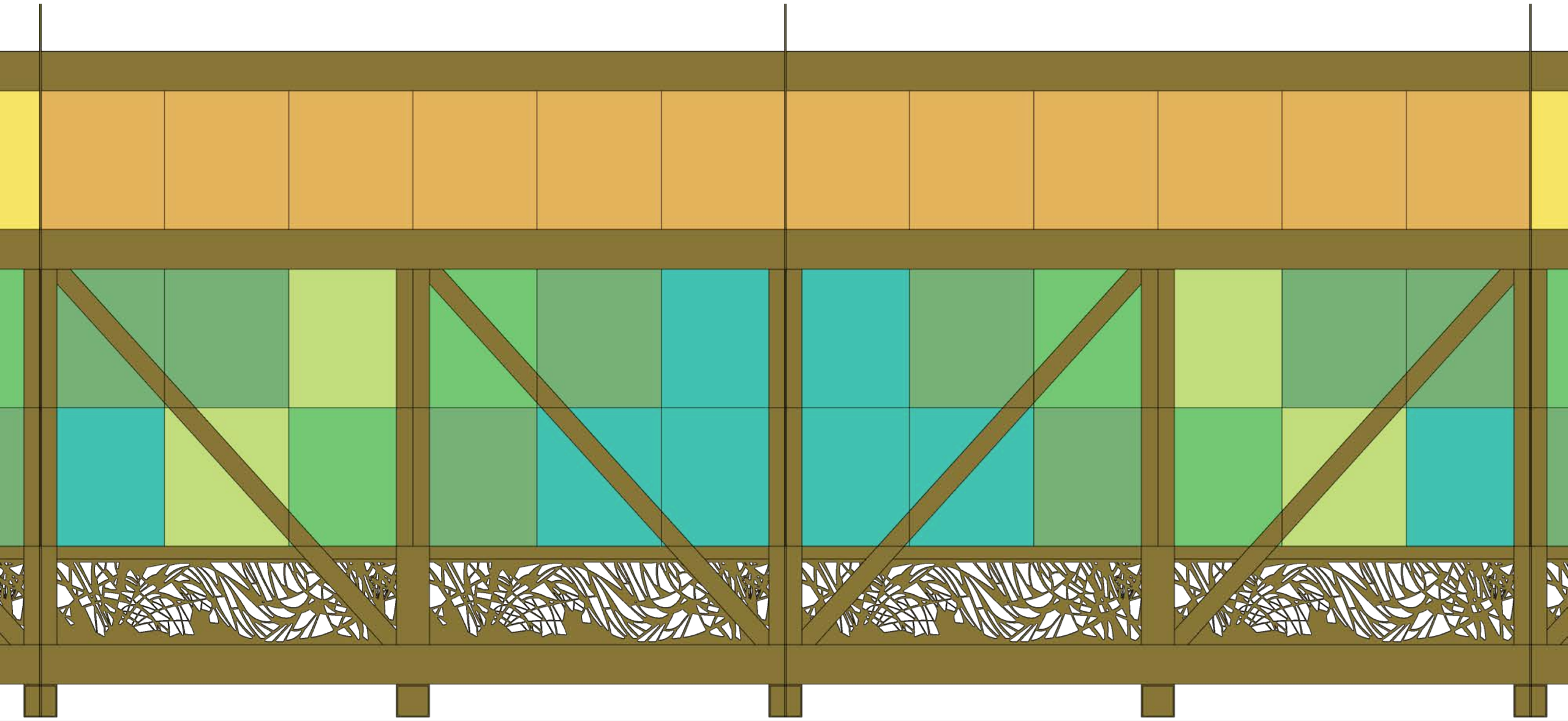
Grass Inspired Grill Patterns

Conceptual Studies

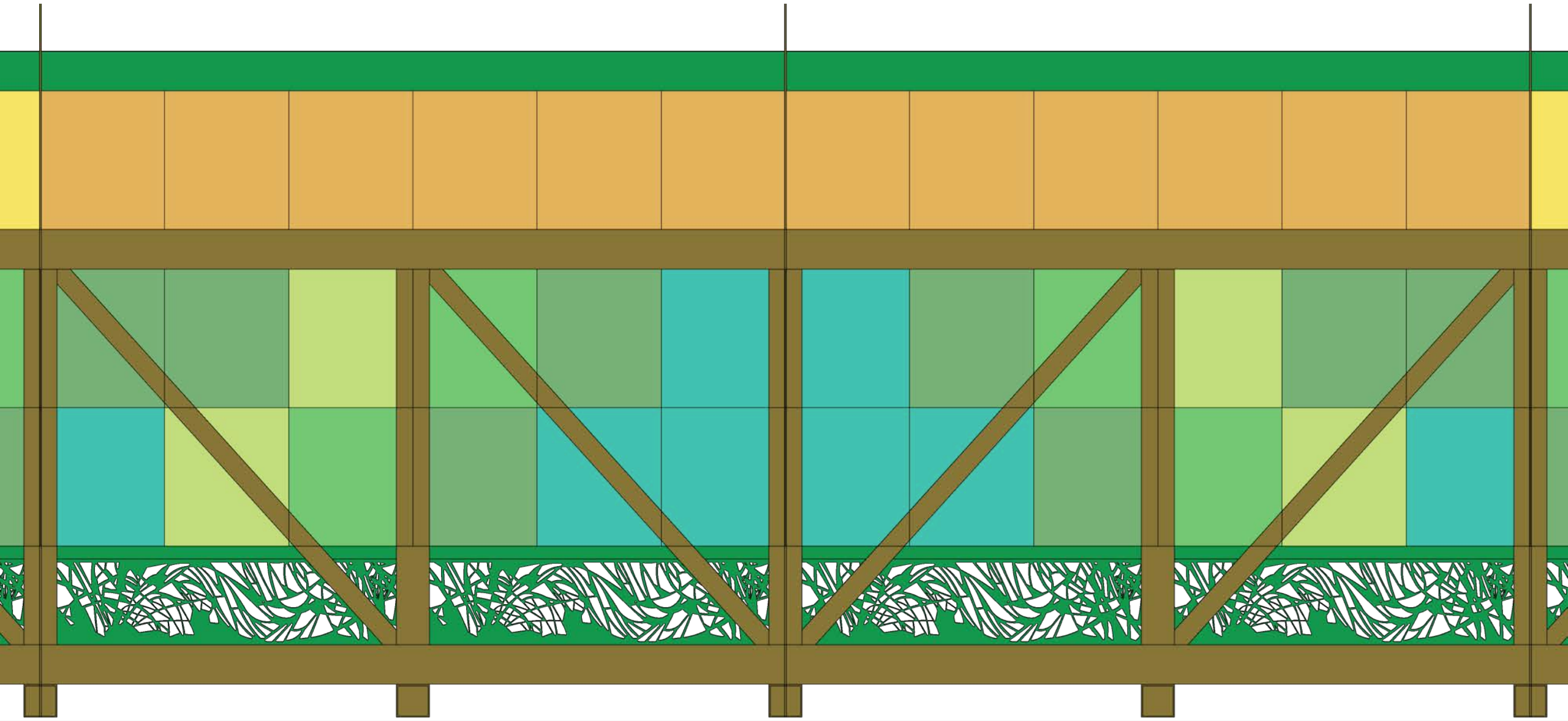
Grass Inspired Grill Patterns



Grass Inspired Grill Patterns in Bronze



Grass Inspired Grill Patterns in Green (Preferred)



Engage Aurora Community Responses

Edited and Sorted Alphabetically

What makes the area around the bridge and the surrounding Aurora neighborhoods memorable and special?

225	grim-looking gray of the RTD parking garage	Parker Road
almost industrial feel	Heather Ridge Golf Course	Plants
area in transition	heavy traffic congestion	Point at Nine Mile
area in transition	high traffic area	relate to pedestrians
aren't any special shops, art, or landmarks	highway	renovations are a significant asset
attempted suicides	history	Reservoir
bike path	history of Nine Mile route to Parker	residential neighbors
bike paths	I-225	safely connect pedestrians to public transit
bike rides	I-25	sense of the city such that busy drivers can see and appreciate the art
Bike Trail	identify the bridge as a vital gateway	without taking their eyes away from traffic
biking	improvements made nearly 20 years ago with the flyovers has been	single family homes from the 60 and 70
bold yet simple design elements	wonderful	somewhat suburban neighborhood
bridge will solve that problem	interstate highway	southwestern entry into the City of Aurora
bustling set of shops	Kennedy Golf Course	state highway
Cherry Creek Lake	large hotel and other office buildings on the east side of I-225	State Park
Cherry Creek Reservoir	light rail	State Park
Cherry Creek Reservoir	light rail	sunrise/sunset
Cherry creek reservoir	light rail	the four iconic office buildings near Parker Road (between Dartmouth and
Cherry Creek State Park	light rail	Yale)
Cherry Creek State Park	lots of traffic	too much traffic to see what's around
Cherry Creek State Park	love of Coloradoans to be a part of the great outdoors	trail by the dam
Cherry Creek State Park	lower density / suburban character	train
Cherry Creek state park	major intersection	transit hub
Cherry Creek State Park and Reservoir	major multi-modal transportation hub	transportation hub
Combination of Urban and Nature	many new residents	transportation nexus
condos from the 80s	mature trees	unfinished redevelopment
connection point to the metro area	mature trees	up and coming area
crimes that happen there	more urban / higher density development	urban neighborhood
dangerous intersection for pedestrians	multi-family dwellings	used to have a Denny's and many shopping areas such as Regatta Plaza
eyesore for over a decade	needs to be softened	Shopping Center
famous Colorado active lifestyle	Nine Mile light rail station	Very busy
fantastic ethnic food	Nine Mile Station	very diverse land uses
faster modes of transportation	not that memorable	visibility and an identity
favorite dive bar - The Nightshift	open space	Walkable
feels like a community	Open spaces	walking paths
freeway access	outdoorsy, bike-riding, trail-loving citizenry	Wildlife
gateway into the city	Parker	

What natural features, flora and fauna most distinguish Aurora's plains and open spaces?

All things native
Antelope
bald eagles
bird species
Birds
birds of pray
birds of prey
blossoming yucca
Blue Gramma Grass
bright blue sky
Bronco (orange and blue) sunsets
Columbines
Cottonwoods
Cottonwood trees
Cottonwood trees
cottonwoods around the creeks
coyote
Coyote
Coyote
Coyotes
Coyotes
coyotes
coyotes
coyotes
Crows
deer
deer
Deer
Deer
Deer
Dry land grasses
ducks
eagles
Elk
evergreen trees
foothills beyond
fox
Fox

fox squirrels
Foxes
foxes
foxes
geese
grasses
Grasses
Grasslands
grasslands
grasslands in the open plains
hawks
Lake
large and small birds
leafy evergreen bushes
leafy trees
magpies
Magpies
many trees in the neighborhoods
mice
Mountains
mountains in the background
Mourning Dove
native grasses
native grasses
natural prairie grasses
Open grassy plains
open spaces
other birds
owls
pelicans
Pelicans
Plains
plants
Plants and animals that we don't see in residential and commercial areas of
the city
prairie
Prairie Dog
Prairie Dogs

prairie dogs
prairie grasses
prairie winds
Prickly Pear Cactus
prong horn
Pronghorn
Pronghorn
rabbits
rabbits
raccoons
red tailed hawks
reminder of the past
Rocky Mountains
rolling hills
rolling hills
rolling prairie
Sagebrush
Short grass prairie
skunks
Skunks
small trees
soft shades of tan and gold
squirrels
state park
Sunflower
Sunflower
sunflowers
sunrises and sunsets
Tall grasses
Trees
valley development
Views of the mountains
Western Meadowlark
wild flowers
Wildflowers
wildlife
Willows
Yucca

How do you plan to use the Nine Mile Pedestrian Bridge and what are your destinations?

9 Mile station.
access train station
bicycle crossing
bike bridge to get to the shopping center across Parker Road
bike path
bike path near nine mile station
bike to work
biking
biking to 9 mile station
bridge will add a layer of safety
calls for suicidal people that want to jump that bridge
Cherry Creek State Park
Commuter on light rail
cross street...
Crossing Parker on a bridge would have me use public transit more often
cultural activities in Denver
Denver Performing Art Center
Downtown for DCPA performances
downtown to avoid parking hell
easy for bikes to access
Everywhere
Exercise
going and coming from public transit
I bike through there
I don't
I don't
I drive in this area often
I hope is protected
I no longer live near the bridge and will not use it
I probably would not use it
I probably wouldn't be a frequent user
I use light rail frequently
I won't use it as much

I'm not a regular commuter on RTD light rail
improvements can be made for pedestrians at the I-225 off-ramp that curves around the light rail station
lacks sufficient and safe sidewalks/pedestrian access to make this bridge useful
Larimer Chalk Art Festival
light rail to downtown
light rail train versus taking my car to the airport or downtown
Nine Mile station
Nine mile station access
other events
pedestrians running across Parker Rd mid-block
ride my bike from Peoria and Yale to Cherry Creek State Park
Rockies games
safe access connecting the low income housing to RTD services
safely cross to gain access to the bike path system
Safely crossing the intersection as a pedestrian
safer to cross with a bicycle to get to/from the path
The Point development will create opportunities for nearby destinations
the stadiums
To get to Regional trails
to go down town
to safely cross
using mass transit as an alternative to the automobile
walk way
Walking
Walking
When I do ride light rail, I'm usually headed to downtown Denver
While biking
without tying up traffic

Symbolically, bridges signify connections. What connections are most important to you?

9Mile Station to shopping	metro area
aged, homeless, diverse families in the area	nature
area transitions to a much higher density, urban area	nature
Aurora's natural heritage	nature for our survival
ball game	neighborhoods
Bike paths	neighborhoods to Cherry Creek State Park
bike trails	Nine Mile Station is a node
Biking	Not sure what you mean here
bridge over a river of traffic to access the rest of the world	Park Meadows Mall
businesses at The Point at Nine Mile to RTD riders	People traveling together to a common destination
Cherry Creek Reservoir	public transportation
Community	safe crossing
community and first responders including police	Safe walking from one side of Parker Road to the other
Concerts	Shows
convenient public transportation	Sports
Denver Int'l Airport (via Peoria light rail & commuter rail station or the RTD "AT" bus service)	The last mile
Denver Tech Center	the local area
destination and not just a link	Theater
Downtown Denver	This is a weird question and does not make a lot of sense
environment	urban and nature
events available (pre-polis) downtown	various segments of community
Family	vital services like groceries
family	Walking and cycling with family and friends
family, community	walking safety
Family, friends	
home and avenues to travel	
how we use the land now to the original inhabitants of the Arapaho people	
inclusiveness	
incredible racial and spiritual diversity of Aurora, CO	
Light Rail	
living arrangements	
make it more of a destination	

What three words best describe the Cherry Creek State Park recreation area?

Biking
Boating
Cherry Creek Recreational Area,
coyote
deer
eagles
Grassland
hawks
hiking
Lake
Mountains
mountains with snow caps
prairie dogs
rabbits
Rocky Mountains
RTD bridge at 2nd and Abeline in
Aurora
squirrel
urban setting
Water
Wildlife
wildlife
wolf

Nine Mile Bridge Design Enhancements / Art in Public Places

all ages, but accessible to elderly and handicapped
Anschutz Medical Campus
attraction to the area - an art installation, with color and images
Buckley Air Force Base
clean and friendly
current exit from Nine Mile to Peoria St. is dark and scary--not conducive to pedestrian traffic
diverse and culturally rich "All-American City"
elevator on both side - maybe connect it to the existing stairs and elevator in the parking garage
fully accessible, clean, and well-lit for safety
Gaylord Rockies Resort
great, ethnic restaurants
One of the largest international airports (DIA) is nearby
open to bikes, walkers, scooters
safe and well lit

21.07.07
To: Roberta Bloom
From: Vicki Scuri

The per square foot price of KodaXT, .5" thick, is \$52/sqft
The per square for price of Lexan, .5" thick, UV Coated is \$33/sqft
The additional cost for sqft for KodaXT, over Lexan, is \$19/sqft

BALLPARK BUDGETS: This Budget Assumes No Exchange for Installation
Artwork/Ballpark Cost Estimates:
100%: \$175,000 (includes 10% Contingency)

1) Material Costs

100%: 4,602 sqft x \$19/sqft = \$87,438 (for KodaXT)
Difference between Lexan and KodaXT: \$87,438
263 linear feet (new length) x 17.5'h (7'+7'+3.5') = 4,602 sqft,
covers both sides of the bridge

2) Installation: NA

3) Grills are Mild Steel Waterjet .25" plate: 1,309 sqft x \$52/sqft = \$68,068
263 linear feet = Total Bridge Length
Large Grills: 9.5'w x 2'h = 19 sqft x 58 units = 1,102 sqft
Small Grills: 9.5'w x .75'h = 7.12 sqft x 29 units = 207 sqft
Total Square Feet: 1,309 sqft x \$52/sqft = \$68,068

4) Powder Coating: Assume it is covered in the price of the grills

5) Stenciled Words: \$10/sqft x 30 (1 sqft each) = \$3,000

Total Costs: 158,506 + 10% (\$16,000) = \$174,506

PRODUCT WEBSITES

KodaXT Website: <https://3form.showpad.com/share/OBIEv40VQ6Co600vKtrMH>

Lexan Website: <https://www.eplastics.com/polycarbonate/sheets/abrasion-uv-resistant/PCCLR0-500AR248X96>

Quote from Sterling Edge

Waterjet Quote (Note we have reduced our square footage to 1,315)

This is for the use of .25" thick steel: revised quote: \$68,380

As previously shown, to cut the 90 parts, from .25" Mild Steel (mill finish), the total cut and material cost would be \$77,612, plus tax, if applicable.

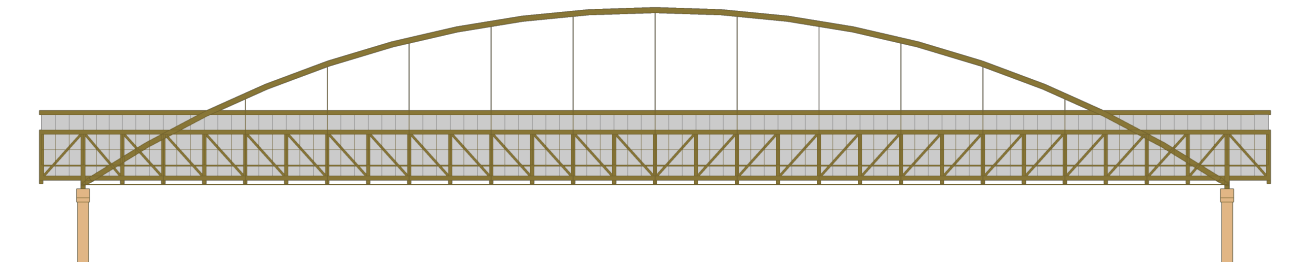
QUOTE# 44375.50811

To cut only the 90 parts, as noted below, customer provided steel, the total cut cost would be \$51,784

QUOTE# 44375.50853

Below is the Basic Bridge in Gray Lexan, UV Coated, .5" thick:

Engineer's Estimate: \$440,000



7

Above is the Amenity Treatment applied to the Basic Bridge using Koda XT, .5" thick

Engineer's Estimate: \$587,000 (Difference is \$147,000 + 10% (\$15,000) = \$162,000

21.07.15 (DRAFT)

9 Mile Station Pedestrian Bridge

Design CM Contract Amount: \$27,000.00

Projected Design Time Line: 3 Years / Vicki Scuri SiteWorks / Hourly Rate: \$150.00

To be billed by Milestone

9 Mile Station Pedestrian Bridge CM OVERVIEW

Design, Fabrication and Construction: The Artist will coordinate with the Design Team throughout all phases of fabrication and construction for the implementation of the aesthetic elements. providing aesthetic oversight. CM Services may include but is not limited to: shop drawing review, material sample review, laser cutting review, on-going digital reviews during fabrication and construction, photographic documentation and a maintenance report.

Date TBD Milestone #1: \$4,500

Contract Document Collaboration & Coordination

Bid Process Coordination as needed

Date TBD Milestone 2: \$13,500

Shop Drawing Reviews

Material Color Sample Reviews

Paint and Powder Coat Color Sample Reviews

Provide Cutting Files for Laser Cut Patterning and Oversight

Review Mock-Ups (may be digital or on site)

Ongoing Digital Reviews as Needed

Coordination as needed

Date TBD Milestone #3: \$4,500

Ongoing Digital Reviews

Ongoing Coordination

Date Milestone #4: \$4,500

Ongoing Digital Reviews

Ongoing Coordination

Photographic Documentation

Maintenance Report

Public Presentation if requested



Vicki Scuri
Interdisciplinary Design & Public Art Specialist

16218 39th Avenue NE 206 361 5964 studio / fax
Lake Forest Park, WA 98155 206 930 1769 cell

vickiscuri.com

vicki@vickiscuri.com

II. GRAND-TOTAL: Project Fee for Design Services: \$27,000

1) The Artist's Design Fee may not exceed the Contract Amount without written approval from the Client.

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**PUBLIC RELATIONS, COMMUNICATIONS, TOURISM, LIBRARIES, BOARDS AND
COMMISSIONS AND CITIZEN GROUPS POLICY COMMITTEE MEETING**
July 30, 2021

Members Present: Council Member Alison Coombs, Chair
Council Member Juan Marcano, Vice-Chair
Council Member Crystal Murillo

Others Present: Midori Clark, Brad Pierce, Ian Best, Michael Bryant, Daniel Kryzanowski,
Roberta Bloom, Rachel Allen, Mac Callison, Sethe Tucker, Jeffrey Moore, Karen
Hancock, Andrea Amonick, Greg Baker, Mindy Parnes, Tom Tobiassen

WELCOME AND INTRODUCTIONS

Council Member (CM) Coombs welcomed everyone.

REVIEW/APPROVAL OF MINUTES

The minutes from June 30, 2021, were approved as presented.

ANNOUNCEMENTS

The Summer of Imagination program with the Library and Cultural Services department is ending. This program was successful and a lot of fun. In-person programming is in the planning process.

CONSENT ITEMS

None.

NEW ITEMS

BUCKLEY SPACE FORCE BASE ANNUAL REPORT 2021

Gregory Long, Deputy Base Civil Engineer, shared the presentation previously provided to the Committee. Mr. Long stated that over the past 12 months the United States Space Force has been established to focus on space missions and defense. The Buckley Air Force Base has since been renamed to the Buckley Space Force Base. Though the name for this base has changed, the early missile warning mission at Buckley Space Force Base has not changed. This is the only installation in the United States and Allied nations with this admission. The 460 Operations Group is now the Delta 4. This group is now responsible for both space and land-based missile warning systems. There are a number of ground pasted antennas on the northern hemisphere and one on each of our coastlines that are looking for missiles. The 460th Space Wing has been renamed the Buckley Garrison which will be the Base Operating Support (BOS) to all installation agencies and tenant organizations assigned to Buckley Space Force Base. These updates encompass the nomenclature and organizational changes that have taken place.

CM Coombs thanked Mr. Long for this update regarding the change in names and language used regarding the base. Mr. Long stated that further changes may take place including naming the Buckley Garrison to Space Base Delta 2 though this is not a confirmed change.

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Mr. Long then shared information regarding updates for major projects that were previously shared with this Committee. This slide encompassed most but not all of the major projects that are taking place on the base. The highlighted projects include a cloud based secured data facility at the top secret level supporting other federal agencies. Another facility similar to this will likely be built soon either on Buckley Space Force Base or somewhere nearby.

CM Marcano asked if the potential second data facility would not be considered top-secret as it has the potential to be built off base. Mr. Long clarified that regulations have changed and the facility is not required to be on a Department of Defense installation, though this is still preferred.

Mr. Long continued to share information regarding facility and infrastructure focus areas. The Readiness and Environmental Protection Integration (REPI) initiative is now complete. This project consisted of investing nearly \$26.7 million into buying land surrounding the base, projecting flying missions and angles of Satellite Relay Stations from encroachment. Additionally, 676 acres of open land was transferred to the City of Aurora. The transportations systems in and around the base are under improvement processes including a Large Vehicle Inspection Point. This inspection point construction should be completed in March of 2022 and will eliminate commercial vehicle traffic through that area. A new Visitor Control Center is also under construction near the Mississippi gate in addition to widening 6th avenue and widening of E. Mississippi Ave. These efforts will drastically increase the traffic flow in the area.

CM Marcano shared he is very familiar with the heavy vehicles that travel on Mississippi towards the gate and believes these changes will be great and he looks forward to the continued infrastructure changes.

Mr. Long continued to share that the base is currently working with Xcel energy to bring a substation to the base as the currently Amazon Web Services building is using 12 megawatts of energy of the overall 32 megawatts being used. Any single customer that uses more than 20 megawatts is required to have their own substation. Bringing in this substation will be nearly a \$60 million project and will result in opening up energy use for approximately 18,000 to 20,000 homes in the area. It is hoped that this project will start within the next 12 months and be fully operational in the next 18 to 24 months.

The NexGen SBIRS Mission Control Station is not currently in Future Years Defense Plan (FYDP) and is anticipated to be approximately \$250 to \$300 million dollars. With this item not currently in the FYDP, this is not being actively pursued. At present approximately \$92 – 115 million are planned to upgrade mission critical infrastructure. The existing Satellite Relay Stations will be upgraded with new mission capability over the next 2 – 5 years.

Buckley Garrison has been directed to take up responsibility for installations at Clear AFS, AK; Cavalier AFS, ND; and Cape Cod, MA. This has not yet taken place as additional staffing is needed to pick up this capability.

CM Marcano stated that he is in awe of how much power the base uses. CM Murillo asked if there are solar panels available. Mr. Long stated that while there are solar panels on the base they are slightly outdated and not effective. CM Murillo stated that with this amount of power she looks forward to being more self-sustaining, particularly with this being a military base. Mr. Long stated that the base is always

DRAFT – Subject to Approval

looking for ways to partner to be more sustainable and tap into renewable energies. CM Murillo stated if the base is interested in pioneering some innovative solar energy development with the city she would be interested in talking further. Mr. Long stated that the majority of the private housing units on the base now have solar panels.

Mr. Long shared a slide detailing the REPI program and the lands purchased to create an encroachment zone primarily for the flying missions that take place on the base.

CM Coombs stated she is excited for the REPI program and thanked Mr. Long for his work and effort in presenting this information. CM Coombs opened the floor for questions.

CM Marcano asked a question regarding the map shown with the REPI slide regarding a parcel of land that is not within the boundaries of the base. Mr. Long clarified that the intention with this land was to swap the land with other open land owned by the City of Aurora. When negotiations for this were taking place there were documents filed for planning permissions on the property in question that is privately owned. CM Marcano asked if the new Satellite Radar Installation will use the same line of site and look angles as the existing structures. Mr. Long stated that the plan is to expand the restricted area and adding 5 antennas. This process will take a huge investment in infrastructure.

Outcome

Information Only

Follow-Up

None Required

A RESOLUTION TO APPROVE THE AESTHETIC ENHANCEMENTS FOR THE NINE MILE PEDESTRIAN BRIDGE

Robert Bloom, Public Art Coordinator, shared the presentation previously provided to the Committee. The Nine Mile Pedestrian Bridge has been in-process for a great deal of time and is now moving towards construction. The art selection process started with an invitational art selection process as the project required an artist with specific skills and experiences related to infrastructure projects and bridges specifically. The project manager for this is Bret Banwart. The Art in Public Places Commission allocated up to \$250,000 from the public art reserve fund because of the nature of the federal funding the project won't generate a large amount of public art funding. Vicki Scuri was selected after an interview process that started with 12 artists, 5 interviews, and a full art selection panel. After this process Vicki Scuri was the clear front-runner from this process.

The concept for this art project was based on prairie grasses. The Engage Aurora tool was used to gather public input for the project. Ms. Scuri used the inspiration of prairie grasses to draft a series of drawings that will be used as grills to create ventilation in the bridge as well as some dimensionality. These will be laser cut into steel and powder coated. She will also be using a material called Koda XT which is a strong polycarbonate resin material. This material comes in up to 250 colors with 9 colors being selected for use in the project. These colors will reflect the colors of the prairie and the sky. The original materials for the bridge cladding was called LEXAN which is another polycarbonate but comes only in neutral colors. The art project is being based on the usage of a single span tied bridge style.

DRAFT – Subject to Approval

Ms. Bloom shared images depicting a rendition of the completed artwork. This detailed the way the shadows from the laser cut grills will be visible to those using the bridge. Additionally detailed was a set of words that were derived from the public input study. These words will be translated into Spanish, Vietnamese, Amharic, Chinese, and Korean. These translated words will be depicted along the beams above the pedestrian bridge to create a welcoming and lively environment.

CM Coombs thanked Ms. Bloom for her presentation and shared that she served on the Art Selection Panel. CM Coombs is very excited about this piece and looks forward to completion. She opened the floor for questions.

CM Marcano stated that he was recently in a meeting where this project was a point of conversation and looks forward to seeing the project move forward.

CM Murillo shared a concern regarding the translation efforts being made. In light of the conflict taking place in Ethiopia it is important for the city to be mindful of the impact the translation may have. It may be beneficial to include Oromo and Tigre translations for this project and further translation projects within the city.

Jeffrey Moore asked if there is a plan in the budget to include anti bird-nesting spikes on the open beams. Roberta stated that this is a question best answered by Bret Banwart. Due to audio concerns CM Coombs asked Mr. Banwart to respond to this question by email to Ms. Bloom and the Committee will be provided with the follow-up.

Outcome

Unanimous consent to move this item to Study Session.

Follow-Up

Staff will move the item to Study Session for review.

PROPOSAL FOR NEW CLIMATE ACTION COMMITTEE

Outcome

Unanimous consent to move this item to Study Session

Follow-Up

Staff will move the item to Study Session for review.

CULTURAL AFFAIRS COMMISSION 2021 ANNUAL REPORT

Outcome

Informational Only

Follow-Up

None Required

DRAFT – Subject to Approval

MISCELLANEOUS MATTERS FOR CONSIDERATION

None

The meeting adjourned at 2:48 p.m.

APPROVED:

CM Alison Coombs, Chair

MINUTES

City of Aurora

CULTURAL AFFAIRS COMMISSION (CAC)

Wednesday, July 14, 2021, 6:30 p.m.

Virtual Meeting hosted through WebEx

Meeting Link:

<https://auroragov.webex.com/auroragov/j.php?MTID=ma59250a85726b25eb24eaede9f9c6c55>

Meeting Number: 146 623 1187

Password: COA-CAC

Commissioners Present	Sethe Tucker, Tone Ellis de Jesus, Mary Mollicone, Ree Varcoe, Auset Maryam Ali, donnie betts
Commissioners Absent	Maureen Maycheco, Matt McCormick
Staff	Midori Clark, Roberta Bloom, Alia Gonzales

Call to Order

The meeting was called to order by the Chair at 6:40 p.m.

Action Item: Approve Agenda for July 14, 2021

A motion was made by donnie and seconded by Ree to approve the Agenda for July 14, 2021. The motion passed unanimously.

Action Item: Consideration of Minutes for June 9, 2021

A motion was made by Mary and seconded by Auset to approve the minutes as submitted. The motion passed unanimously.

Action Item: 9-Mile Pedestrian Bridge Presentation with Roberta Bloom

Roberta Bloom with Art in Public Places presented a proposed art project for the 9-Mile Pedestrian Bridge. This project has a total budget of \$250,000. \$175,000 of this budget is allocated to materials, fabrication, and installation. \$25,000 is allocated to the artist contract for project oversight. The remaining funds are allocated to the design contract.

This project has been supported by an Art Selection Panel comprised of: City Council members Alison Coombs and Juan Marcano; Art in Public Places Commissioners Mary Mollicone, Ana Valles, and Jesse Jimenez; Community Members donnie I. betts and Veronica Thighe; Artist David Griggs; Project Manager Bret Banwart; Eva Mather, Chad Argentar, and Christina Zazueta. This project kicked off in January of 2021 with an initial meeting with the Art Selection Panel who narrowed the number of potential artists from twelve to five candidates. In February final interviews were held with Vicki Scuri being the strong first choice for the project. A design contract for \$48,000 was created and signed and included a community engagement component. In June of 2021 Vicki presented a concept based on input through Engage Aurora. Core values determined by Engage Aurora included mobility, aesthetics, and safety. On July 7, 2021 the Art in Public Places Commission approved the proposed artwork concept.

donnie moved to approve the 9-Mile Pedestrian Bridge proposal as presented. Sethe seconded this motion. The motion passed unanimously.

Discussion Item: Annual Retreat Planning

The commission discussed options staff presented regarding date and time availability for the annual retreat. The consensus was to hold the annual retreat on Saturday, August 14 from 9:00am to 1:00pm at the Central Library. Staff will work to ensure a virtual option is available for any Commissioners unable to join the meeting in person.

Discussion item: Annual Policy Committee Report

The Cultural Affairs Commission is scheduled to present their annual report to the PR+ Policy Committee on July 30, 2021. Auset and Sethe will join staff to present.

Reports:

Chair – None at this time

Art in Public Places – On Saturday, July 24, 2021, 5:00pm – 8:00pm the 7/20 Memorial Foundation’s Annual Fundraiser is taking place at the Waterwise Garden at the Aurora Municipal Center. September 3rd – 5th the Colfax Canvas Mural Festival is taking place in the Aurora Cultural Arts District. Saturday, October 23, 2021, 11:00am – 4:00pm Treat Street at the Arapahoe County Fairgrounds Event Center will be taking place. Friday, October 29, 2021, 3:00pm – 7:00pm the Boos Cruise is taking place at Aurora Sports Park.

Aurora Fox Arts Center – The Fox wrapped up their 36th season with the close of the Wonderland show. This show brought in a significant amount of revenue and ended the season on a successful note. The Little Foxes had 15 participants, and the facility is now open for external rentals.

Art & Business Connection – No update at this time.

Staff Report – Midori shared an update regarding the ongoing discussion related to SCFD funding that impacts the City of Aurora. This discussion is ongoing and the Commission will continue to be updated as discussions continue.

Comments from Commissioners – None at this time.

Public Comment – None at this time.

Adjourn – The meeting was adjourned by the Chair at 8:22p.m.

Sethe Tucker, Chair

Midori Clark, Staff

The purpose of the Cultural Affairs Commission is to provide ongoing systematic planning for the development of Cultural Arts activities within the city of Aurora; to assist the many community cultural groups by providing needed overall resources; to stimulate community involvement; and to enhance current cultural activities.

ART IN PUBLIC PLACES COMMISSION

Minutes from July 7, 2021

Video Conference Meeting

Wednesday, July 7, 2021 6:00 pm | 2 hours | (UTC-06:00) Mountain Time (US & Canada)

I. Call to order

- a. Meeting will began at 6:02 pm

II. Action items

- a. Review of Aesthetic Enhancements for the 9 Mile Pedestrian Bridge
Vicki Scuri used patterns and colors inspired by prairie and sky to bring life to the bridge. Photos of native grasses were used to create the pattern for the metal vents, capturing their movement in the wind. Vicki Scuri’s design proposal uses colored KodaXT (translucent polycarbonate) in a grid pattern to clad the walls of the bridge. The grid was decided on because it fits within the bridge trusses and uses the maximum amount of standard material sheet sizes with minimal waste. The third element of Vicki’s proposal uses words collected from the Engage Aurora survey and are planned to be stenciled on the crossmembers above the walkway. She would like the underside of the roof to be painted yellow to match the color of the community words and the overall finish of the bridge is proposed as being painted bronze. Vicki suggested that the roof of the bridge be a shed roof to allow the addition of a clerestory on the northwest side of the bridge allowing for an additional row of color and for more light to come into the bridge. After many discussions with the project managers and the designer, the consensus is that Vicki Scuri’s proposal is under budget and is achievable as proposed. Vanessa Frazier moves the motion to approve the proposal for the 9 Mile Pedestrian Bridge; Brittany Pirtle and Amy Cheslin second the motion.

III. Adjournment

Adjourned at 7:39 pm



CITY OF AURORA

Council Agenda Commentary

Item Title: Proposal for New Climate Action Committee
Item Initiator: Karen Hancock and Jeffrey Moore
Staff Source/Legal Source: Jeffrey Moore /Ian Best, Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 6.4--Provide appropriate stewardship of natural resources to ensure long-term sustainability for the city

COUNCIL MEETING DATES:

Study Session: N/A

Regular Meeting: N/A

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: Planning & Economic Development

Policy Committee Date: 5/12/2021

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

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

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

Council Member Coombs would like to bring this item to the Committee for review.

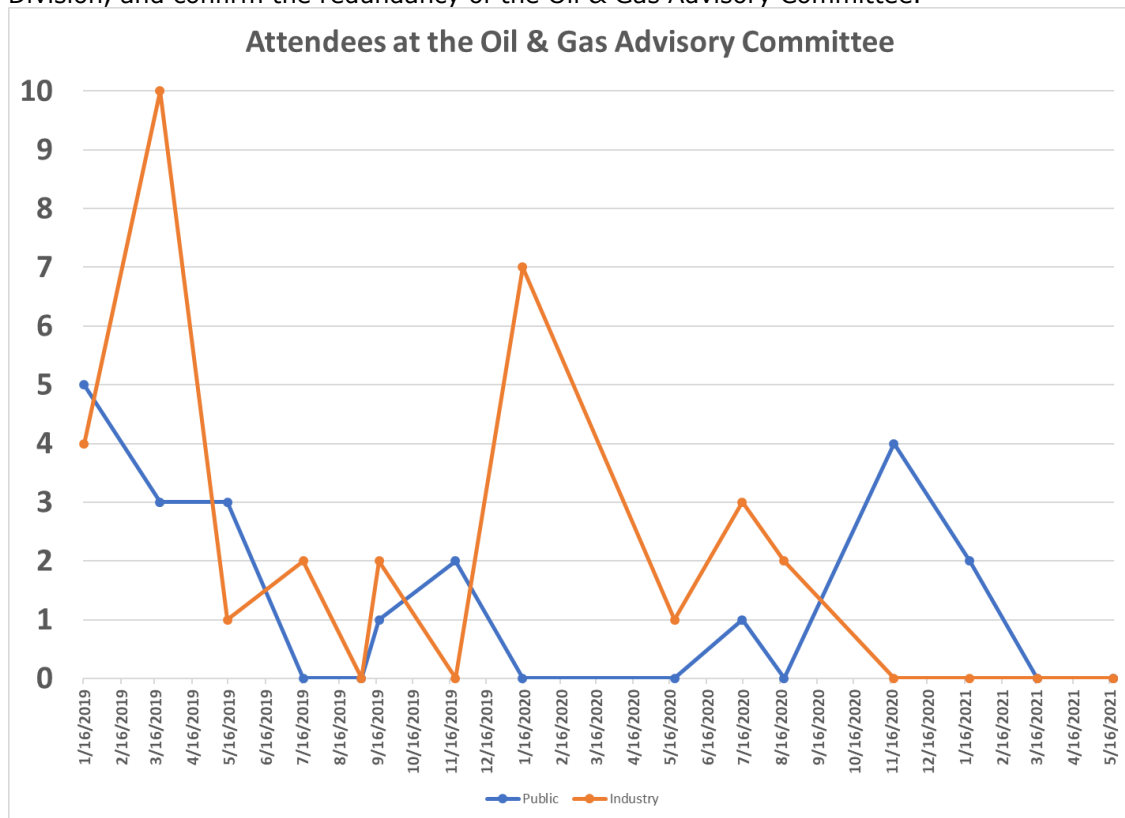
ITEM SUMMARY (Brief description of item, discussion, key points, recommendations, etc.)

Council Member Coombs will provide a presentation to the policy Committee about this proposal. This item creates a new Climate Action Committee and dissolves the Oil and Gas Advisory Committee.

The Oil and Gas Advisory Committee has served a crucial and timely role since its creation by Council in 2015. Since that time, it has provided a forum for citizens and industry to better understand different perspectives on oil and gas operations. The Committee has also provided insights and guidance to Council on oil and gas matters.

The creation of the Oil & Gas Division and hiring of the first Oil & Gas Manager in 2020, has created some redundancy with the Committee. The Oil & Gas Division is now available fulltime to receive and discuss citizen concerns, provide perspective and guidance to City Council on oil and gas matters, and answer industry questions about our regulations. The passing of the Oil & Gas Manual ordinance on May 24, 2021, further completed work in which the Oil & Gas Advisory Committee played a supporting role. Other jurisdictions such as Broomfield, canceled their citizen oil and gas committee once their regulations were updated.

A review of attendance at the Oil & Gas Advisory Committee meetings in 2019, 2020, and 2021 demonstrate very low attendance by members of the public. During that time, the average number of public attendees per meeting was 1.4 persons. This value ignores Committee members, City staff, and special guest speakers. During that time period, industry attendees averaged 2.1 persons. These values demonstrate that neither members of the public nor industry staff are deriving great value from attendance. I would add that this time period reviewed covered 8 in-person meetings and 7 virtual meetings. There is no discernable trend in the data, except attendance may be slightly less in the more recent meetings. We believe the data support the positive benefits of the Oil & Gas Division, and confirm the redundancy of the Oil & Gas Advisory Committee.



With these facts in mind, we believe the proper next step is the closing of the Oil & Gas Advisory Committee.

Climate change continues to be an increasingly important topic worldwide. In the United States, at the federal and state levels, new regulations and new climate-related goals are becoming more prevalent. In the past, City staff and departments have engaged at various levels in researching and participating in the climate change discussion.

We believe that a resident's Climate Action Committee would be valuable in the coming years, to research topics around climate change, including new state and federal regulations which may have an impact not only on City operations, but on our own regulations. Much like the Oil & Gas Advisory Committee, the Climate Action Committee would provide feedback to Council on these topics.

The Committee would have members from general residents, as well as from specific industries/groups.

QUESTIONS FOR COUNCIL

Does the Committee wish to forward this item to Study Session for review by the full Council?

LEGAL COMMENTS

City Charter Article 3-9 authorizes the City Council to enact ordinances necessary to protect life, health and property and to preserve and enforce good government, general welfare, order and security of the city and the inhabitants thereof. (Best)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain:

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain:

ORDINANCE NO. 2021- ____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, ENACTING SECTIONS OF THE CITY CODE PERTAINING TO A CLIMATE ACTION ADVISORY COMMITTEE AND REPEALING SECTIONS OF THE CITY CODE PERTAINING TO OIL AND GAS ADVISORY COMMITTEE

WHEREAS, Aurora desires an environment that allows our community members to live an active lifestyle, with open spaces, clean air and water, walkable neighborhoods and commercial areas, and recreational programming that promotes physical and mental well-being; and

WHEREAS, there is a priority/tactical approach to develop a comprehensive environmental stewardship plan for the protection and sustainability of our natural resources and open spaces; and

WHEREAS, the Oil and Gas Advisory Committee has successfully assisted the City in developing appropriate City Code for the City and offered a forum to discuss community and industry issues which will now be administered by the Oil & Gas Division; and

WHEREAS, the new Climate Action Advisory Committee will address a range of policy considerations including oil and gas impacts.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. The City Code of the City of Aurora, Colorado, Article IV and Sections 106-161, 106-162, 106-163, 106-164 and 106-165 are hereby amended as follows:

ARTICLE IV. CLIMATE ACTION ADVISORY COMMITTEE

Sec. 106-161 – Created.

(1) There is hereby created and established a Climate Action Advisory Committee for the purpose of advising City Council on policy matters.

Sec. 106-162 – Functions and Duties.

The Climate Action Advisory Committee shall serve the following functions and duties:

(a) The Committee shall review, as requested by Council or staff, and provide feedback on any ordinance, resolution, rule, regulation, or charter amendment, including any specific policy initiatives. The Committee may also make

recommendations regarding community engagement on sustainability and climate actions, state and federal regulations and compliance efforts, incentives and available programs, and communications regarding information about available programs, projects, and initiatives.

- (b) Provide an educational forum on the impact of policy initiatives.
- (c) As directed by Council, the Climate Action Advisory Committee will report to the appropriate Council Policy Committee.

Sec. 106-163 – Membership.

The Climate Action Advisory Committee shall be comprised of the following members all of whom shall be appointed by the City Council:

- (a) Five Residents. These members shall be residents of Aurora. Resident members shall be limited to those that don't meet criteria for any other category of membership under this section.
- (b) Advocacy Group. These members shall be employed (or volunteer) with relevant advocacy groups. There shall be at least one members but no more than two.
- (c) State Representation. These members shall be employed with state entities working on climate related issues. There shall be at least one members but no more than two.
- (d) Regional/Front Range Representation. These members shall be employed with regional or front range entities working on climate related issues. There shall be at least one members but no more than two.
- (e) Energy Industry. These members shall be employed in in the utilities, construction, energy efficiency, renewable energy, oil and gas, or related field. There shall be at least one member but no more than two.
- (f) Aurora Business Owner(s). There shall be at least one member but no more than two.

Sec. 106-164 – Terms.

The term of appointment for members of the Climate Action Advisory Committee shall be for three (3) years. Members can serve a maximum of three (3) consecutive terms.

Sec. 106-165 – Organization.

The Climate Action Advisory Committee shall be organized pursuant to Charter Section 9-1, and shall make rules of procedure and adopt bylaws to be consistent with the duties listed in this Article.

~~ARTICLE IV. OIL AND GAS ADVISORY COMMITTEE~~

~~Sec. 106-161 – Created.~~

~~There is created and established an oil and gas advisory committee for the purpose of advising city council on matters relating to oil and gas development in the city.~~

~~Sec. 106-162—Functions and duties.~~

~~The oil and gas advisory committee shall serve the following functions and duties:~~

~~(a)— Provide advice and recommendations to the city council and staff regarding oil and gas development within the city in matters that the city has legal authority to regulate.~~

~~This advice will focus on protecting the interest of the public, local business, property and mineral owners, and promote responsible and efficient exploration and development of oil and natural gas within the city's boundaries. The committee will seek to come to a consensus on the matters discussed that will be provided to council in the form of a majority and minority report.~~

~~(b)— Provide an educational forum for the oil and gas industry, citizens, surface owners, and other stakeholders, to discuss the benefits and impacts of industry activity within the city.~~

~~(c)— Consistent with these functions and duties, it is not within the committee's mission or mandate to pursue any ordinance, resolution, rule, regulation, or charter amendment that substantially impedes the efficient and equitable development and production of oil and gas within the city.~~

~~Sec. 106-163—Membership.~~

~~The oil and gas advisory committee shall be comprised of the following members:~~

~~(a)— *Five citizens.* These members shall be citizens of Aurora and shall be appointed by city council. Of these five citizens, every attempt shall be made to appoint two citizens from the areas most affected by oil and gas at the time of the appointment. Factors for consideration for being "most affected" may include the number of wells in an area, new applications being submitted for oil and gas drilling, early stages of drilling and construction of the well pad and oil and gas extraction, and any other factor city council deems relevant to the appointment; and~~

~~(b)— *Three industry representatives.* These representatives shall be registered Colorado electors, whose employer shall be registered with the Colorado Oil and Gas Conservation Commission. These representatives will be comprised of those who are actively exploring, drilling, and/or producing oil and/or gas within the city and may include oil and gas operators, pipeline companies, rig companies, and/or any other company actively engaged in the oil and gas industry within the city; and~~

~~(c)— *Three surface or property owners.* Surface or property owners are those individuals or companies that are either a surface owner of vacant land that holds minerals or a mineral owner of a vacant land parcel.~~

~~Sec. 106-164—Terms.~~

~~The term of appointment for members of the oil and gas advisory committee shall be for three years. Members can serve a maximum of three consecutive terms.~~

~~Sec. 106-165—Organization:~~

~~The oil and gas advisory committee shall be organized pursuant to Charter section 9-1, and shall make rules of procedure and adopt bylaws to be consistent with the duties listed in this article.~~

Section 2. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 3. City employees violating the terms, directives, or mandates of this Code are not subject to the general penalty provisions contained in Section 1-13 of this City Code.

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 5. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this ____ day of _____, 2021.

PASSED AND ORDERED PUBLISHED this ____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

IAN BEST, Assistant City Attorney



CITY OF AURORA

Late Submission Approval for Agenda Item

Item Title: Proposal for New Climate Action Committee
Item Initiator: Karen Hancock and Jeffrey Moore
Staff Source/Legal Source: Karen Hancock, Jeffrey Moore, Ian Best, Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 6.4--Provide appropriate stewardship of natural resources to ensure long-term sustainability for the city

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

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

COUNCIL MEETING DATES FOR LATE SUBMISSION:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

This item was presented to the PR+ Policy Committee on Friday, July 30, 2021. The item received unanimous consent from CM Crystal Murillo, CM Alison Coombs, and CM Marcano to move forward to the next study session taking place August 16, 2021. With this item being presented to the PR+ policy committee on Friday, July 30 it was not possible to get the item in prior to the initial Study Session deadline.

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

Alia Gonzales

Agenda Item Initiator Name

Agenda Item Initiator Signature

8/3/2021

Date

Marshall P. Brown

Late Submission Approver Name

Late Submission Approver Signature

8/4/2021

Date



CITY OF AURORA

Council Agenda Commentary

Item Title: CP21 Report
Item Initiator: Jason Batchelor, Deputy City Manager
Staff Source/Legal Source: Jason Batchelor , Deputy City Manager/Daniel L. Brotzman, City Attorney
Outside Speaker: N/A
Council Goal: 2012: 1.0--Assure a safe community for people

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: N/A

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

- Approve Item as proposed at Study Session
- Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

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

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

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

Type Text Here

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

Type Text Here

QUESTIONS FOR COUNCIL

Click or tap here to enter text.

LEGAL COMMENTS

Type Legal Comments Here

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: Type Text Here

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: Type Text Here



Recommendations for the Aurora Police Department

21CP Solutions

August 2021

TABLE OF CONTENTS

SCOPE & APPROACH 1
 Scope of the Assessment 1
 Approach 2

CONTEXT & BACKGROUND 5
 What APD Does 6

AREA 1. CRITICAL OPERATIONS 13
 Use of Force 13
 Stops, Searches and Arrests 53
 Bias-Free Policing 59
 Crisis Intervention 63

AREA 2. COMMUNITY ENGAGEMENT & PARTICIPATION 73
 Community Policing, Problem-Solving, and Engagement in Aurora 73
 The Role & Function of Police in Aurora Going Forward 77

AREA 3. ORGANIZATION AND COMMAND STRUCTURE..... 92
 Organizational Structure 92
 Deployment & Staffing..... 94
 Command Staff..... 98

AREA 4. SELECTION, SUPERVISION, AND SUPPORT OF PERSONNEL 104
 Recruitment, Hiring and Selection..... 104
 Training 116
 Field Training Officer Supervision, Selection, and Training..... 119
 Early Intervention & Peer Support 124

AREA 5. ACCOUNTABILITY 129
 Officer Misconduct & Complaints 129
 Transparency & Oversight..... 145

AREA 6. EQUIPMENT, TECHNOLOGY, AND DATA SYSTEMS..... 149

SCOPE & APPROACH

Scope of the Assessment

The City of Aurora (“Aurora” or “the City”) engaged 21CP Solutions (“21CP”) to conduct an assessment of the Aurora Police Department’s (“APD” or “the Department”) policies, procedures, and operations and to provide recommendations for enhancing the Department’s efforts at providing safe, just, effective, and equitable public safety to the Aurora community.

This engagement occurred in the context of other, separate inquiries into and relating to APD. The first was an investigation by members of the Independent Review Panel that addressed the death of Elijah McClain, which made a number of factual findings and specific recommendations.¹ The Independent Review Panel released their report on February 22, 2021.² Second, the Colorado Attorney General’s Office is conducting a “patterns and practices” investigation of APD.³ Finally, the Community Police Task Force has reviewed APD’s practices and formulated specific recommendations.⁴

Mindful of these concurrent, independent processes, 21CP’s assessment focused on comparing APD’s practices, policies, and procedures against best, promising, and emerging national practices. This report therefore focuses on those areas of greatest opportunity within APD and on actionable recommendations for short- and intermediate-term improvements.

We note that to even as the recommendations of the Independent Review Panel and Community Police Task Force are not all directly, or even indirectly, addressed here, such omissions should not be read as disagreement with or an objection to such recommendations. Those reviews had different lenses and different inputs, and we urge the City of Aurora and APD to take seriously all findings and recommendations from those reviews. 21CP’s review should be read not in lieu of, or in competition with, those reviews but, instead, as another, third source of guidance for the Department to consider as it moves forward.

¹ Independent Review Panel, *Investigation Report & Recommendations* (Feb. 22, 2021), [https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20\(FINAL\).pdf](https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/News%20Items/Investigation%20Report%20and%20Recommendations%20(FINAL).pdf) [hereinafter “Independent Review Panel Investigation Report”].

² *Id.*

³ Jesse Paul, “Colorado Attorney General Opens Investigation into ‘Patterns and Practices’ of Aurora Police Department,” *Colorado Sun* (Aug. 11, 2020), <https://coloradosun.com/2020/08/11/aurora-police-colorado-attorney-general-patterns-and-practices/>.

⁴ Ryan Ross, Community Police Task Force, *City of Aurora Community Police Task Force Recommendations* (Mar. 20, 2021), <https://auroragov.org/common/pages/DisplayFile.aspx?itemId=17557323> at 72–81.

Likewise, we note that our review did not independently investigate any cases or evaluate specific incidents. Instead, this report focuses on APD’s overall practices and how its policies, procedures, protocols, and systems contribute to those practices.

This report also discusses long-term possibilities for Aurora to re-imagine the ways that police help to promote public safety in Aurora. We emphasize that nothing in this report should be read as foreclosing the opportunity for the Aurora community, elected officials, and City stakeholders to define public safety and identify response mechanisms that might reduce the City’s overall reliance on APD in responding to various types of community problems or issues. However, because implementing broader changes in APD’s role and response likely will require time, effort, and community collaboration, this report focuses on the specific steps that APD can take right now that can have a tangible impact across Aurora’s communities.

Approach

21CP’s assessment and recommendations are based on an analysis of three primary sources of information or raw “data”: paper, performance, and people; the assessment of APD is no exception.

First, 21CP requested and received an array of written materials and information about, and relating to, APD’s operations. This included policies, procedures, protocols, training curricula, annual reports, and other similar materials. These were evaluated in light of an array of emerging and best practices and national standards. We detail or reference the specific APD materials alongside the particular emerging and best practices through which we considered those materials throughout the report.

Second, 21CP endeavored to evaluate the Department’s performance in practice. This primarily took the form of evaluating a variety of APD performance data to understand long-term performance patterns, dynamics, and trends. We analyze various classes of overall, aggregated data throughout the report.

We note that, in some jurisdictions where we have conducted similar work, 21CP has reviewed individual use of force investigations, officer misconduct investigations, or documentation of stops and arrests. Mindful of the Attorney General’s ongoing investigation on patterns across individual incidents and past performance, we focus here on APD’s current operations and recent performance to get a sense of where APD can most readily improve.

Third, 21CP conducted conversations, focus groups, and interviews with a diverse array of Aurora stakeholders in which approximately 220 individuals participated. These included Aurora residents, elected officials, and representatives of community organizations. It also included APD officers across ranks, positions, and assignments.

The individuals who spoke with us wanted to speak with us, making participation voluntary and self-selecting. Participants were not randomly selected, and the views of participants in our community conversations may or may not reflect Aurora as a whole. Additionally, although we had a number of conversations, our process did not endeavor to include a statistically-significant number of Aurora stakeholders. Consequently, it is near certain that some important views did not surface in our engagement simply because of the number of individuals and stakeholders with whom we were able to engage. Nevertheless, among those with whom we did speak, some common issues, concerns, experiences, and suggestions emerged.

Where this report discusses community feedback or views, the sentiments addressed are those that appeared to resonate across at least several individuals. The report cites, characterizes, and sometimes quotes stakeholder participants. To ensure candid discussions and to preserve the confidentiality of participants who sometimes shared sensitive or traumatic experiences, 21CP did not log the identities of who said what during our stakeholder engagement. Their affiliations were recorded, for context, and the specific contents of what they said. Accordingly, this report refers to particular stakeholders in generic ways – as “an officer,” “a community member,” or the like.

Although the assessment and this report aim to address the most critical and immediate steps that APD might take to enhance community well-being, improve public safety, and provide service in an equitable and just manner, it is not and should not be considered to be exhaustive.

First, any large organization like a police department performs a broad, complex array of functions and services. This makes the prospect of a single evaluation of every conceivable aspect of a department’s performance, operations, and administration unrealistic. Indeed, large, substantial, and standalone evaluations could focus on various technology, operational, business, and administrative practices and could provide an array of highly detailed recommendations. Again, and in contrast, this report identifies significant recommendations in the areas of most urgent import.

Second, there are some areas of inquiry that, because of APD’s current practices, simply cannot be as detailed. For example, as this report discusses, the Department does not currently require officers to report all non-voluntary encounters, e.g., *Terry* stops. Consequently, one of the core areas in which concerns about inequity and disparate impact surface – stops, searches, and seizures – 21CP could not conduct a detailed analysis of the Department’s performance. Although this report identifies several specific steps that the City and APD should take with respect to new policies, reporting procedures, and training on non-voluntary encounters, 21CP cannot, in the absence of better information and data, readily determine whether the Department’s stop activity disproportionately impacts Aurora’s BIPOC communities.

This report aims to provide specific guidance, and practical recommendations, for APD and the Aurora community based on its unique needs, values, and experiences. However, Aurora is not alone in confronting significant issues and concerns surrounding the role, actions, and performance of police in its community. 21CP has undertaken similar reviews for other jurisdictions that address many of the same issues and challenges. Perhaps unsurprisingly, given the shared challenges that communities and police departments face, some of the recommendations we propose for APD are the same. Even where we make common recommendations – and in some places discuss the logic and rationale for those recommendations using the same language, similar examples, or parallel references as in reports to other communities – the specific realities of APD and needs of the Aurora community are the focus of our recommendations throughout this report.

We approached this report, our work in Aurora, and our interactions with Aurora stakeholders with humility and respect. Although we believe that our assessment provides sufficient grounds for specific recommendations rooted in best practices, we are not from Aurora. Travel restrictions related to the COVID-19 pandemic also prevented 21CP from spending the type of on-the-ground, in-person time with community and APD stakeholders that is typically a part of our assessment methodology. It is entirely possible, if not probable, that these and other limits to our approach, may have led us to overlook details, miss nuance, or bypass some areas of importance. To this end, 21CP shared a finalized draft of the recommendations and analysis presented here with the Department and city leadership to ensure that our evaluation was not misstating or missing important facts. APD provided valuable follow-up information during this final review process. Although 21CP did not change or alter any of our core conclusions or recommendations, this report does describe the efforts that the Department has recently made or is currently making in areas relating to the report's recommendations.

Ultimately, this report does not have all of the answers. We do not have all of the answers. For that matter, it is unlikely that any one of Aurora's stakeholders alone have all of the answers. Instead, the purpose of this report is to identify methods by which that the Aurora community, APD, elected officials, and other stakeholders might promote ever-more inclusive, equitable, effective, and just public safety in Aurora tomorrow.

CONTEXT & BACKGROUND

Known as the “Gateway to the Rockies,” Aurora was designed as a four-square-mile suburb to Denver in 1891. Amid and after World War I and II, Aurora experienced population booms, with military families moving to Aurora following the establishment of Lowry Air Force Base, Fitzsimons Army Hospital, and Buckley Air Base.⁵ A number of elements of the community retain ties to the Air Force and Army bases in the region.

The Aurora Police Department is one of the largest police departments in Colorado. The Department received national attention on July 20, 2012, when APD quickly apprehended a gunman who opened fire in the Aurora Century 16 Theater, killing 12 and injuring 58 people.⁶

As 21CP heard from diverse Aurora stakeholders, APD and its performance has increasingly been the subject of criticism and concern from community members. In 2016, a man, suspected of pick-pocketing, accused APD officers of hog tying him and repeatedly tasing him while he was subdued.⁷ In 2018, the Civil Commission reversed a decision of the Department’s then-Chief to fire an officer recorded using a racial slur during a pursuit of a subject, prompting significant community condemnation.⁸ The death of Elijah McClain on August 24, 2019⁹ remains a source of outrage and anger both within Aurora’s communities and nationally.

In August 2020, after serving as Interim Police Chief for seven months, Vanessa Wilson was named as Police Chief. In October, the Chief outlined her “New Way Plan,” intended to restore public trust in policing, to the City Council.¹⁰

APD serves a population of 388,723. Aurora is the third-largest city in Colorado and the 52nd-largest in the United States.¹¹ The City of Aurora has a 1.23 percent annual growth rate, with the population increasing by 19.6 percent since the 2010 census.¹²

⁵ City of Aurora, Things to Do, Aurora History Museum, *Aurora History*, <https://www.auroragov.org/things-to-do/aurora-history-museum/aurora-history> (last visited May 28, 2021).

⁶ *Id.*

⁷ Kirk Mitchell, “Suspected Pickpocket Sues Aurora Claiming Officers Tortured Him with Tasers,” *Denver Post* (June 30, 2016), <https://www.denverpost.com/2016/06/29/suspected-pickpocket-sues-aurora-police-claiming-torture/>.

⁸ Ryan Haarer, “Aurora Police Lieutenant Keeps Job After Getting Caught Using Racial Slur,” KUSA.com, <https://www.9news.com/article/news/local/aurora-police-lieutenant-keeps-job-after-caught-using-racial-slur/73-572606240>.

⁹ See *Independent Review Panel Investigation Report*.

¹⁰ City of Aurora, News, What’s New, “Aurora Outlines ‘A New Way’ Forward” (Oct. 20, 2020), <https://auroragov.org/news/whats-new/aurora-outlines-a-new-way-forward>.

¹¹ World Population Review, Aurora, Colorado, <https://worldpopulationreview.com/us-cities/aurora-co-population> (last visited Feb. 24, 2020).

¹² *Id.*

Overall, the rate of major crimes grew by 250 crimes per 100,000 residents between 2011 and 2019.¹³ It appears that violent crime drove the crime rate increase over these years, with the violent crime rate increasing by 83 percent from 250 per 100,000 residents in 2011 to 458 per 100,000 residents in 2019. More recently, reported violent crime increased by 22 percent from 2019 to 2020,¹⁴ which is generally consistent with national trends.¹⁵

What APD Does

APD is authorized 892.5 employees – 744 sworn and 148.5 non-sworn personnel.¹⁶ Table 1 provides detail about the assignments of sworn and non-sworn employees, as well as about vacancies by division. Approximately 54 percent of the sworn employees are assigned to the Operations Division which is primarily the patrol function. Twenty-eight percent of sworn employees are in the Metro Division, which includes most of the Department’s investigative functions and specialized units such as intelligence, traffic, SWAT, and K-9.

Table 1. APD Staffing and Vacancies, April 2021

	Sworn			Civilian		
	Employees	Billets	Vacant	Employees	Billets	Vacant
Administration	20	21	(1)	10	9	1
Operations	404	429	(25)	13	16	(3)
Metro Division	208	217	(9)	39	45	(6)
Professional Accountability	99	71	28	3	3	0
Business Services	8	6	2	70.5	75.5	(5)

Source: 21CP Analysis of APD Data

Note: 21CP has learned that, since these numbers were current as of April 2021, 25 officers have left the Department.

Table 2 shows sworn staffing within APD’s Operations Division for each of the patrol districts.

¹³ DJ Summers, “Aurora’s Violent Crime Rate Ranks 3rd Out of Colorado’s Ten Largest Cities,” *Fox 31/2 News* (Oct. 6, 2020), <https://kdvr.com/news/auroras-violent-crime-rate-ranks-3rd-out-of-colorados-ten-largest-cities/>.

¹⁴ Aurora Police Department, *Year-End Report (2020)*, https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/Residents/Public%20Safety/Police/Crime%20Data/2020%20Year-End%20UCR%20Report.pdf (last accessed May 24, 2021).

¹⁵ Major Cities Chiefs Association, *Violent Crime Survey – National Totals*, <https://majorcitieschiefs.com/wp-content/uploads/2021/02/MCCA-Violent-Crime-Report-2020-and-2019-Year-End-Final.pdf> (last accessed May 24, 2021).

¹⁶ Aurora Police Department, *Master Deployment File* (Apr. 1, 2021).

Table 2. Current APD Operations Division Sworn Staffing by District and Rank

	Commander	Captain	Lieutenant	Sergeant	Agent	Officer
District 1						
Command	1	1		3	14	1
Patrol			4	15		96
Sector			1	2		10
District 2						
Command	1	1	1	2	12	
Patrol			4	13		81
Sector			1	3		17
District 3						
Command	1	1		3	9	
Patrol			4	13		73
Sector			1	1		14
Total	3	3	16	55	35	292

Source: 21CP Analysis of APD Data

No single type of information or set of statistics can, by itself, establish everything that a police department does – or show whether the department is or is not allocating its time appropriately in light of community issues. One type of data useful in understanding what a community asks of its police and what a police department spends its time doing relates to calls for service. This includes analyzing what people call about, when such calls arise, the priority levels assigned to those issues when calls are received, and the correlation, between those calls and crime.

21CP evaluated APD’s calls for service based on the priority type assigned by dispatch. It appears that a majority of calls (about 69 percent) were classified as either priority 1 (“where immediate police intervention is required to avert personal injury, extensive property damage, or where prompt arrival is necessary to effect criminal apprehension”) or priority 2 (“calls that are urgent in nature requiring a quick police response that have a potential, but no imminent, risk of personal injury”).¹⁷

¹⁷ SOP PSC 0.02 Call Processing Protocols.

Table 3. Calls for Service by Priority Type, 2016 – 2020

Priority	Calls for Service	
0	61	0.0%
1	265,176	25.4%
2	455,529	43.7%
3	259,976	24.9%
4	33,602	3.2%
5	23,113	2.2%
6	1,949	0.2%
7	480	0.0%
8	775	0.1%
9	1,410	0.1%

Source: 21CP Analysis of APD Data

An analysis of APD’s calls for service suggests that APD is called upon to field a large volume of issues that have little to do with violent crime. Table 4 summarizes APD’s calls for service data, detailing the number of calls handled between 2016 and 2020 across some fifty-three Department categories.

Table 4. APD Calls for Service by Category, 2016 – 2020

Category	CFS	% of Total	Category	CFS	% of Total
Traffic Stop	122,167	11.7%	Parking	7,769	0.7%
Suspicious	78,307	7.5%	Harassment	7,055	0.7%
Traffic Accident	70,930	6.8%	Transport	5,521	0.5%
Area Check	64,932	6.2%	Drugs	4,820	0.5%
Traffic Enforcement	63,125	6.1%	Animal Issue	4,632	0.4%
Alarm	53,797	5.2%	Court Order	4,328	0.4%
Disturbance	51,682	5.0%	Sex Offense	4,255	0.4%
Welfare Check	51,528	4.9%	Shots Fired	3,914	0.4%
Follow Up	44,886	4.3%	Behavioral Issue	3,910	0.4%
Family Offenses, Nonviolent	43,902	4.2%	Emergency Assist	3,799	0.4%
Theft	39,349	3.8%	Abuse/Neglect	3,747	0.4%
Assist	32,226	3.1%	Knock	3,575	0.3%
Civil Issue	31,482	3.0%	Fight	3,098	0.3%
Unknown	25,919	2.5%	Lost/Found Property	2,961	0.3%
Assault	20,310	1.9%	Juvenile Issue	2,853	0.3%
Auto Theft	17,465	1.7%	Robbery	2,655	0.3%
Administrative	15,547	1.5%	Abandoned Property	2,466	0.2%

Warrant	15,138	1.5%		Trespassing	2,184	0.2%
Missing Person	12,807	1.2%		Alcohol	1,653	0.2%
Unwanted Person	11,910	1.1%		Miscellaneous Policing	1,501	0.1%
Burglary	9,674	0.9%		Death	754	0.1%
Vandalism	8,895	0.9%		Abduction/Kidnapping	278	0.0%
911	8,835	0.8%		Shooting	215	0.0%
Other	8,318	0.8%		Prostitution Offense	189	0.0%
Suicide	8,128	0.8%		Bomb Threat	74	0.0%
Weapons Law Violation	8,111	0.8%		Homicide	54	0.0%
Driving Under the Influence	7,803	0.7%				

Source: 21CP Analysis of APD Data

Over a quarter of calls for service handled by the Aurora Police Department between 2016 and 2020 were traffic-related, with the Department’s 120,000 traffic stop incidents, accounting for 11.7 percent of all calls for service over that span. Although some traffic stops may be initiated on grounds that there is sufficient suspicion that individuals are, have been, or are about to engage in criminal activity, it is highly unlikely that all of APD’s traffic stops implicate violent crime issues.

Across a number of other areas, APD officers spend their time focusing on public safety and well-being issues that do not immediately implicate violent crime. For instance, about 5 percent of calls involve conducting a “welfare check.” Some 5 percent of calls are responding to alarms. Another 6 percent of calls are “area checks.” Response to instances of theft are another 4 percent of calls. “Follow up” calls are 4 percent of calls, “civil issues” are 3 percent of calls, and “auto thefts” are approximately 2 percent of calls. Together, the seven categories detailed here account for nearly three out of ten (29 percent of) APD calls for service.

About 2.4 percent of all calls for service can be associated with the National Incident-Based Reporting System (“NIBRS”) offenses that the FBI classifies as “violent crime.” NIBRS is a classification scheme and reporting protocol established by the Federal Bureau of Investigation in 1930 to help standardize and “improve the overall quality of crime data collected by law enforcement.”¹⁸ An incident having a call for service associated with a NIBRS event does *not* necessarily mean that a NIBRS offense occurred. Still the methodology helps to approximate the percentage of incidents that may be violent in nature. About 8.9 percent of calls are associated with NIBRS offenses classified by the FBI as “society”-related concerns and 6.6 percent are “property crime.” Even if categories such as “weapons law violation,” “shots fired,” and “fight” were included as “violent” rather than

¹⁸ Federal Bureau of Investigation, Services, Criminal Justice Information Services, *Uniform Crime Reporting*, <https://www.fbi.gov/services/cjis/ucr> (last visited Apr. 28, 2021).

“society” crime, approximately 3.8 percent of Aurora’s calls for service would be considered as violent crime.

Importantly, although an incident may be categorized as a non-violent offense, it does not mean that a violent offense has not occurred within the context of such interactions, or that the situation was not dangerous for the responding officers. We provide details about these numbers in Table 5, below, to offer context for the myriad of community issues that APD is called on to address – and not to either minimize or exaggerate the potential threats of violent crime that APD officers and the Aurora community may encounter.

Table 5. Calls for Service Associated with NIBRS Offenses, 2016 – 2020

NIBRS Category	Category	Calls for Service	% of Total
Property Crime	Theft	39,349	3.8%
Property Crime	Auto Theft	17,465	1.7%
Property Crime	Burglary	9,674	0.9%
Property Crime	Robbery	2,655	0.3%
Property Crime	Total	69,143	6.6%
Society	Family Offenses, Nonviolent	43,902	4.2%
Society	Vandalism	8,895	0.9%
Society	Driving Under the Influence	7,280	0.7%
Society	Harassment	7,055	0.7%
Society	Weapons Law Violation	7,055	0.7%
Society	Drugs	4,612	0.4%
Society	Shots Fired	3,914	0.4%
Society	Abuse/Neglect	3,747	0.4%
Society	Fight	3,098	0.3%
Society	Alcohol	1,036	0.1%
Society	Prostitution Offense	173	0.0%
Society	Total	93,187	8.9%
Violent Crime	Assault	20,310	1.9%
Violent Crime	Sex Offense	4,255	0.4%
Violent Crime	Abduction/Kidnapping	278	0.0%

Violent Crime	Shooting	215	0.0%
Violent Crime	Homicide	54	0.0%
Violent Crime	Total	25,112	2.4%

Source: 21CP Analysis of APD Data

Ultimately, data suggests that APD officers spend a significant amount of time addressing community issues, problems, needs, and concerns that do not directly relate to violent crime. 21CP emphasizes that the calls for service data discussed above should not be interpreted as showing that APD does not address serious instances of crime and violence. It does. Instead, the available data illustrates that APD is called on to provide services in response to a host of issues related to a substantial and broad array of community problems. Some relate directly to crime and violence, while many others relate to other community matters.

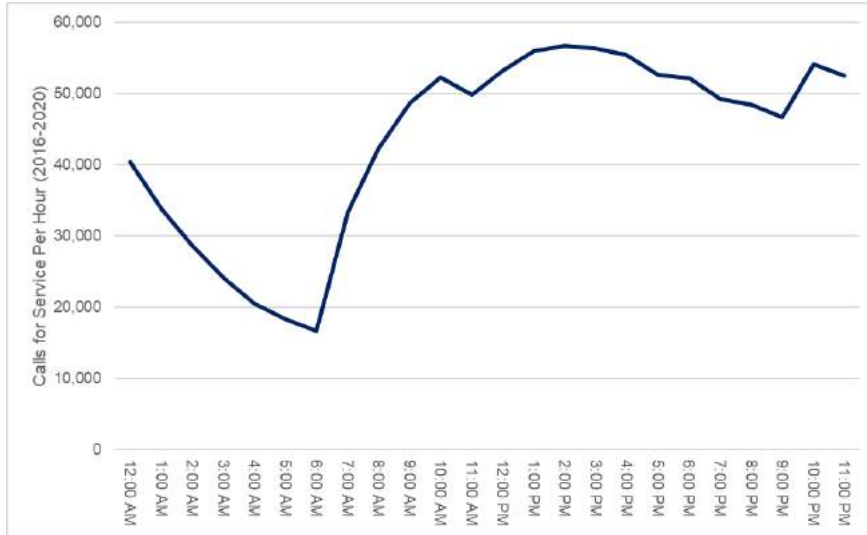
Separately, 21CP considered calls for service data to identify when APD fields the most calls. In Aurora, calls for service volume peaked between 2 and 3 PM between 2016 and 2020 though they are elevated from 10 AM to 7 PM and then again from 10 PM to midnight.

Table 6. Calls for Service by Time of Day, 2016 – 2020

Time	Calls for Service	Time	Calls for Service
12:00 AM	40,373	12:00 PM	53,145
1:00 AM	33,826	1:00 PM	55,945
2:00 AM	28,708	2:00 PM	56,669
3:00 AM	24,109	3:00 PM	56,337
4:00 AM	20,550	4:00 PM	55,365
5:00 AM	18,335	5:00 PM	52,657
6:00 AM	16,747	6:00 PM	52,102
7:00 AM	33,280	7:00 PM	49,256
8:00 AM	42,224	8:00 PM	48,397
9:00 AM	48,633	9:00 PM	46,673
10:00 AM	52,290	10:00 PM	54,106
11:00 AM	49,856	11:00 PM	52,488

Source: 21CP Analysis of APD Data

Figure 1. Calls for Service by Time of Day, 2016 – 2020



Source: 21CP Analysis of APD Data

AREA 1. CRITICAL OPERATIONS

Use of Force

To understand APD’s practices with respect to use of force, 21CP, among other things, reviewed APD policies, protocols, training, and other materials; analyzed use of force data; and discussed issues relating to force with a number of APD members and community stakeholders. With respect to performance data, 21CP requested information from 2016 through 2020.

For any use of force encounter, information may be analyzed in terms of both *incidents* and *applications*. A use of force *incident* is an encounter involving officers and a distinct subject on a distinct occasion. A use of force *application* is the use of a particular type of force by an officer. In any given force *incident*, it is possible that officers use different types of force and/or apply force multiple times – such that one force *incident* may involve multiple *applications* of force to the same subject.

APD policy classifies force into categories, or Tiers, of force. Specifically, a force *incident* may be classified as a Tier 1, Tier 2, or Tier 3 level of force based on the severity of the force used or the significance of the injury caused or issues resulting. Tier 3 involves the most serious force, which is “the use of a deadly weapon, or deadly force, or potentially deadly force,” or “the use of any degree of force or action, tools, or weapons, which results in hospitalization or death.”¹⁹ Tier 2 involves mid-level force, which includes the utilization of various types of force instruments and force that involves an injury but not hospitalization.²⁰ Tier 1 involves the least-severe types of force, including the use of restraints and various types of force that do not result in injury.²¹ For force *incidents* where officers applied multiple types of force, the incident is generally categorized according to the most-significant level of force used – such that if an officer used restraints (a type of Tier 1 force) and deadly force (Tier 3 force) in the same encounter, the force incident would be classified as a Tier 1 incident.

APD’s data, which the Department summarizes and analyzes in annual reports, shows that the overall number of incidents in which officers use force has gone down each year from 2016 through 2020. It appears that officers are using force categorized as less significant or severe in recent years as compared to 2016 – that is, a larger share of use of force incidents are Tier 1 incidents in 2017 and more-recent years as compared to 2016.

¹⁹ APD Directive, Section 5.4.2(d). A supervisor may also independently classify a use of force incident as Tier three for purposes of notification, response, and investigation. *Id.*

²⁰ APD Directive, Section 5.4.2(c). The policy outlines a number of specific force types and types of encounters that constitute Tier Two force. *Id.*

²¹ APD Directive, Section 5.4.2(b).

Table 7. Use of Force Incidents by Officer by Tier, 2016 – 2020

	2016		2017		2018		2019		2020	
Tier 1	382	58%	450	75%	404	68%	423	72%	378	81%
Tier 2	268	41%	145	24%	179	30%	159	27%	86	18%
Tier 3	8	1%	5	1%	9	2%	9	2%	2	<1%
TOTAL	658		600		592		591		466	

Source: APD and 21CP Analysis of APD Data

Aggregate use of force statistics must be situated, to at least some degree, within the larger context of a department's overall activity and number of interactions. A department may use more or less force, in absolute terms, in a given year in part because it has been engaged in greater numbers of interactions with members of the public overall.

Table 8 inventories calls for service for each year from 2016 through 2020 and computes a rudimentary statistic that captures the number of force incidents per 10,000 calls for each year. Force per calls for service was somewhat down and flat in the years 2017, 2018, 2019 compared to 2016. Although the number of force incidents overall went down in 2020, the number of calls for service that APD received was also substantially down – which means that the rate of force incidents per calls for service was higher in 2020 than in prior years. 21CP cautions here that a much more detailed analysis of both calls for service data and of individual use of force incidents would be necessary to understand if this trend suggests a greater reliance on force in 2020 or if, instead, it might be explained by changes in the nature of the calls themselves. Indeed, across the country, data for 2020 reflects substantially altered patterns of human and social behavior in light of the Covid-19 pandemic, which makes straightforward conclusions based solely on top-level aggregate data challenging. Further, numbers for 2020 include force used in the context of protest response, which may independently account for the elevated rate of force per 10,000 calls reflected in Table 8.

Table 8. Use of Force Incidents by Calls for Service, 2016 – 2020

Year	Calls for Service	Use of Force Incidents	Force Incidents Per 10,000 Calls
2016	228,048	658	29
2017	229,663	600	26
2018	234,901	592	25
2019	230,914	591	26
2020	118,545	466	39

Source: 21CP Analysis of APD Data

21CP also considered the various force types, instruments, and tactics that APD officers employed in use of force incidents. During our review, we learned from APD it has changed

over time the way that it categorizes various force application types. Those changes make year-over-year comparisons more challenging. Consequently, for the purposes of understanding context, we considered force application data for the calendar year 2020, which is summarized in Table 9.

Table 9. APD Use of Force Incidents by Type of Force Listed, 2020

Type of Force	Applications
Control Techniques Successful	823
Control Techniques Twist locks, takedowns, throws, etc. Successful	142
Hobble Successful	67
Restraining Subjects for Medical Personnel Successful	54
Other Successful	42
Control Techniques Unsuccessful	42
Other Restraints Successful	42
Personal Weapons/ Punches, strikes etc. Successful	37
Other Launchable Munitions Successful	36
Taser-Dart Probe Successful	35
Restraining Subjects for Medical Personnel	35
Baton Successful	34
Taser-Dart Probe Unsuccessful	24
Tactical Vehicle PIN Successful	24
Control Techniques Twist locks, takedowns, throws, etc. Unsuccessful	20
12 Gauge Sock Round Successful	16
Taser-Stun Gun Successful	16
Baton not a strike Successful	14
Pepper Spray (OC) Successful	13
Other Launchable Munitions Unsuccessful	13
Police Canine Successful	12
Deadly Force Successful	5
Hobble Unsuccessful	5
Tactical vehicle PIN	4
Pepper Spray (OC) Unsuccessful	4
PIT Maneuver Successful	3
Subjects for Medical Personnel Successful	3
Vehicle Boxing Successful	3
Taser-Stun Gun Unsuccessful	3
Restraining Subjects for Medical Personnel Unsuccessful	3
12 Gauge Sock Round Unsuccessful	2
Taser-Dart Probe Successful/Taser-Dart Probe Unsuccessful	2
Other Unsuccessful	1

Personal Weapons Unsuccessful	1
PIT Maneuver Unsuccessful	1

Source: 21CP Analysis of APD Data

Note: The force types listed originate from APD's current classification scheme.

Like many other police departments, government organizations, and private firms that must collect and analyze data about complex human interactions, APD should seek to continually strengthen its existing capacities for collecting data in a manner that facilitates and simplifies aggregation and analysis. Because APD is already collecting and tracking data on use of force, the opportunity for the Department going forward is to streamline *how* it collects data and to enhance its ability to *analyze* such data such that it can become ever-more committed to continuous self-analysis and improvement.

For instance, as Table 9 reflects, APD categorized data on the specific type of force that officers use across 35 distinct types in 2020. It is not immediately apparent – and it does not appear to be described in policies, protocols, or a data dictionary – how similar categories may be distinct. It is not readily apparent, for example, how the 823 “Control Techniques” applied in 2020 are distinct from the 142 “Control Techniques – Twist locks, takedowns, throws, etc.” Even to the extent that there may be differences that some within the Department can explain, it is not apparent from APD protocols or policies that these similar categories are rigorously operationalized such that the distinction is useful and uniform across personnel and the Department. Separately, multiple applications of force are frequently contained in one cell, such as “Baton SuccessfulTaser-Dart Probe SuccessfulTaser-Dart Probe UnsuccessfulTaser-Stun Gun SuccessfulPersonal Weapons/ Punches, strikes etc. Successful,” which makes analyzing force applications more challenging than it could be.

21CP also sought to evaluate the characteristics of subjects and officers involved in use of force incidents. Although 328 unique officers used some level of force in 2020, a small number of APD officers appear to apply a disproportionate amount of force. Specifically, 27 APD officers, which is about 8 percent of the total number of officers who used force and 3.5 percent of officers overall, were responsible for nearly one-quarter (24 percent) of all applications of force in 2020.

At the outset, it must be noted that the demographics of the subjects are not uniformly captured based on a variety of factors, such as in protest incidents where a subject may be wearing a mask and hoodie thus making demographics more challenging to identify. We note in our data analysis that race and gender information was missing for nearly one-fifth (19.2 percent) of all subjects of force. Without certainty in the data, based on what was missing or could not be gathered, an analysis of use of force trends with respect to subject characteristics cannot be as reliable as it should be.

For the uses of force in which subject race/ethnicity and gender information was gathered, Black men were represented among force subjects at a rate significantly higher than their share of Aurora’s population. Specifically, Black men were the subject of 29% of force incidents even as they make up 9% of Aurora’s population. White men were also represented among force subjects at a rate somewhat lower than their population, with white men the subject of 23% of force incidents even as they are 31% of the population. The results of this data analysis were consistent with prior assessments conducted of APD force data and presented to Aurora’s City Council.²²

Table 10. Use of Force Incidents by Subject Race/Gender Groups, 2020²³

Race	Gender	Subjects	% of Total	% of Population	Difference
Asian	Male	7	1%	3%	-2%
Black	Male	187	29%	9%	20%
Black	Female	43	7%	8%	-1%
Hawaiian/Pacific Islander	Male	4	1%	0%	0%
Hispanic	Male	72	11%	14%	-3%
Hispanic	Female	13	2%	14%	-12%
Two or More Races	Male	1	0%	3%	-2%
Unknown	Unknown	118	18%	N/A	N/A
Unknown	Male	5	1%	N/A	N/A
White	Male	149	23%	31%	-7%
White	Female	43	7%	27%	-21%

Source: 21CP Analysis of APD Data

To understand the issues and dynamics under which the aggregate performance summarized above has been occurring, 21CP spoke to numerous APD personnel and community stakeholders about the Department’s policies, procedures, training, investigative and supervisory practices, and other protocols as well as reviewed a variety of related materials. The following recommendations are aimed at identifying improvements, enhancements, and changes that might foster enhanced subject, officer, and public safety across all APD interactions while promoting the resolution of incidents without force or a less impactful use of force.

²² Quincy Snowdon, “Aurora Police Disproportionately Use Force Against Black People, Report Says,” *Sentinel Colorado* (Oct. 18, 2020), <https://sentinelcolorado.com/news/aurora-police-disproportionately-use-force-against-black-people-report-says/>.

²³ The table only includes subjects of race and gender groups for whom police used force more than twice. Therefore, the table does not display those race or gender groups that only had 1 or 2 events, such as Asian/Indian Males (classified in APD data as a separate category from Asian Males).

We note, at the outset, that APD indicates that it has identified outside consultants to help “review and re-write Use of Force policies” and that 21CP’s “recommendations will be provided to such consultants for review and inclusion in the policy re-writes.”²⁴

Recommendation 1. APD’s use of force policies should be substantially revised to provide better, more specific guidance to officers on when force may and may not be used.

APD’s primary policy on force (Directive 5.08), and supporting policies on firing a weapon (Directive 5.01) and Less-Lethal instruments (Directive 5.08), rely on reprinting Colorado statutes. In doing so, the Department’s policies fail to address a host of critical concepts, lagging far behind peers and best practices. Even more critically, the deferral to Colorado state statutes suggests to officers that the City of Aurora and its police department expect them to meet nothing more than generic, minimum standards. Officers are left to feel on their own to determine how to comply with the broad parameters of state law in the context of the particular concerns and needs of the Aurora community.

Providing clear policies on when officers may and may not use force is a foundational obligation of all law enforcement agencies. “To ensure fair, safe, and effective policing now and in the future, community members and police leaders should work together to create clear and specific guidance and expectations on appropriate use[] of force”²⁵ Federal and state law “outlines broad principles regarding what police officers can legally do in possible use-of-force situations, but it does not provide specific guidance on what officers should do.”²⁶ Therefore, police departments must continually evaluate and ensure that their policies provide more sufficiently specific guidance and “rules of the road” to which officers can readily adhere in the real world.²⁷

As Chief Justice Warren Burger reportedly observed, “[t]he officer working the beat makes more decisions and exercises broader discretion affecting the daily lives of people everyday and to a greater extent than a judge will exercise in a week.”²⁸ Recognizing that police officers need specific, before-the-fact guidelines as to what responses are and are not appropriate, departmental policies will often state their intention to provide subjects with more protection from use of force than the minimum requirements of state or federal law, for example:

²⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 2.

²⁵ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair, Safe, and Effective Community Policing* 112 (2019).

²⁶ Police Executive Research Forum, *Guiding Principles on Use of Force* 15 (2016).

²⁷ *Id.* at 17.

²⁸ Karen M. Hess, *Police Operations: Theory and Practice* 523 (5th ed. 2006).

- **New Orleans Police Department** – “[T]he Department places restrictions on officer use of force that go beyond the restrictions set forth under the Constitution or state law.”²⁹

Compared to Colorado state law, the **Denver Police Department’s** policies on use of force provide more detail and more specific guidance to officers than the broad requirements of federal and state law.³⁰

As the following sub-recommendations will make clear, APD needs to revise its core use of force policies along a number of critical dimensions. Ultimately, APD policy should expressly provide that officers may use force only when necessary, proportional and objectively reasonable, to the nature of a subject’s threat, and after de-escalation tactics and strategies have been attempted and failed, or are not feasible under the given circumstances. 21CP understands that APD has committed to conducting a comprehensive revision and update of its force policies, which 21CP commends them for doing. In support of that commitment, as the Department looks to enhance its policies, we offer an array of specific recommendations.

Recommendation 1.1. APD should streamline its existing policies on use of force into a centralized policy, or a few core policies, addressing force.

Currently, officer guidance on when they may and may not use force is scattered across at least ten separate, interrelated policy provisions in Chapter 5 of APD’s Directives Manual. More than the number of policies, the overlapping nature of the policies risks undue confusion. For instance, with respect to the circumstances in which an officer may or may not fire a weapon at a subject, Directive 5.03, Use of Physical and Deadly Force, provides general standards for using deadly force such as firearms. Directive 5.01, Authorized Firing of a Weapon, contains additional limitations on the use of firearms (e.g., “[a]t persons who have committed only a misdemeanor or traffic violation” or “[t]o prevent the destruction of property or theft”).³¹ While another policy, Directive 5.05, Authorized Weapons and Ammunition, addresses issues surrounding what types of firearm equipment officers may carry.

As APD overhauls its force policies, it should make efforts to streamline and structure the revised policy materials in a way that provides clear guidance to officers on when they may and may not use force. Although its critical nature and the many important issues surrounding the application, response, investigation, and review of force make a single policy

²⁹ New Orleans Police Department, Chapter 1.3, Use of Force Policy at 5, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf> (last rev. Apr. 1, 2018).

³⁰ Denver Police Department, Operations Manual, Section 105.01, Use of Force Policy, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSB ook/OM_Book.pdf (Sept. 1, 2020).

³¹ APD Directive 5.1, Section 5.1.3.

addressing all force issues seem impractical. However, some police departments, such as the Camden County Police Department of New Jersey, have successfully transformed their force policies to provide all expectations for officer performance in the field into a single policy.³² Other departments, like the New Orleans Police Department, detail the majority of its specific instructions on when and how officers are authorized to use force in a single policy,³³ with specific, subsidiary policies addressing handcuffing and restraint devices,³⁴ control devices and techniques,³⁵ and Tasers.³⁶ Regardless of approach, APD should work to streamline and centralize core guidance to officers on when force may and may not be used.

Recommendation 1.2. APD’s use of force policy should contain a comprehensive statement of purpose and the Department’s values – expressly affirming the sanctity of human life, emphasizing the imperative that force be minimized or avoided when possible, and articulating the community’s values and expectations regarding the preservation of life and use of force.

APD’s current policies do not articulate the Department’s overriding values and philosophy regarding the use of force. As the Department works to overhaul its force protocols, it should ensure that all of its policies – but especially its core policies on force – expressly affirm the sanctity of human life as an overriding value and organizational imperative.

President Obama’s Task Force on 21st Century Policing reported that “a clearly stated ‘sanctity of life’ philosophy must . . . be in the forefront of every officer’s mind.”³⁷ Some examples of overarching policy statements that more clearly make the connection between force and the sanctity of life, including the minimization or avoidance of force when possible, include:

- **Las Vegas Metropolitan Police Department** — “It is the policy of this department that officers hold the highest regard for the dignity and liberty of all persons, and place minimal reliance upon the use of force. The department

³² Camden County Police Department, Use of Force Policy, <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5d5c89c2e3bc4c000192f311/1566345667504/CCPD+UOF+Policy+%288.21.19%29+%28FINAL%29.pdf> (last rev. Aug. 21, 2019).

³³ New Orleans Police Department, Chapter 1.3, Use of Force Policy, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/> (last rev. Apr. 1, 2018).

³⁴ New Orleans Police Department, Chapter 1.3.1.1, Handcuffing and Restraint Devices, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-1-1-Handcuffing-and-Restraint-Devices-EFFECTIVE-5-10-20.pdf?lang=en-US> (last rev. May 10, 2020).

³⁵ New Orleans Police Department, Chapter 1.3.1.2, Control Devices and Techniques, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-1-2-Control-Devices-and-Techniques-EFFECTIVE-4-01-18.pdf/> (last rev. Apr. 1, 2018).

³⁶ New Orleans Police Department, Chapter 1.7.1, Conducted Energy Weapon (CEW), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-7-1-Conducted-Energy-Weapon-EFFECTIVE-12-6-20.pdf?lang=en-US> (last rev. Dec. 6, 2020).

³⁷ *Final Report of the President’s Task Force on 21st Century Policing* 19 (2015).

respects the value of every human life and that the application of deadly force is a measure to be employed in the most extreme circumstances.”³⁸

- **New Orleans Police Department** — “The policy of the New Orleans Police Department is to value and preserve human life when using lawful authority to use force”³⁹

Recommendation 1.3. APD’s force policy, consistent with its other provisions and the other recommendations presented here, should provide more specific and comprehensive definitions of key terms and concepts to better aid officers in understanding the policy’s performance expectations.

APD’s force policies do not define a number of critical terms. For instance, Directive 5.03 Section 5.3.3, quotes Colorado state law as permitting the use of deadly force if an officer has “an objectively reasonable belief” that lesser force is “inadequate” and that the officer or someone else is “in imminent danger of being killed or receiving serious bodily injury.” However, the concept of “objective reasonableness” is neither defined nor explained.

The force policies of many other departments, such as the Denver Police Department,⁴⁰ Cleveland Division of Police,⁴¹ and Seattle Police Department,⁴² find it useful to inventory a number of key terms and provide uniform definitions to ensure consistency and clarity. APD’s revised policy should likewise expressly identify and define key terms.

Recommendation 1.4. APD’s use of force policy should authorize force only when it is necessary under the circumstances.

Currently, the concept of necessity surfaces only in APD policy’s re-printing of Colorado state statute.⁴³ Specifically, Directive 5.03 provides that officers “may use a degree of force which he reasonably believes to be necessary for” the purpose of defending the officer or another

³⁸ Las Vegas Use of Force Policy at 1149, <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/569ad92b57eb8d0f11460ead/1452988719385/Las+Vegas+Use+of+Force+Policy.pdf>.

³⁹ New Orleans Police Department, Chapter 1.3, Use of Force Policy, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/> (last rev. Apr. 1, 2018).

⁴⁰ Denver Police Department, Operations Manual, Section 105.01, Use of Force Policy, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBBook/OM_Book.pdf (Sept. 1, 2020).

⁴¹ Cleveland Division of Police, General Police Order, Section 2.01.01, Use of Force – Definitions, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018Definitions.pdf?id=12396 (Jan. 1, 2018).

⁴² Seattle Police Department, Policy Manual, Section 8.050 – Use of Force Definitions, <http://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions> (June 19, 2020).

⁴³ APD Directive 5.03, Section 5.3.1.

from the threat of imminent physical harm.⁴⁴ The concept of necessity is tied not to an officer's determination as to whether to use force but, instead, to the amount, type, or scope of force that an officer applies.

Going forward, APD policy expressly provide as a policy imperative that any force, regardless of level or severity, may be deployed only when and if it is necessary under the circumstances. For instance:

- **Denver Police Department** – “Force may only be used if non-force alternatives would be ineffective in effecting a detention for any lawful purpose, an arrest, preventing an escape or preventing an imminent threat of serious bodily injury or death to an officer or another person. The intended action must be required based on the circumstances and will only consist of the amount of force needed to safely accomplish a lawful purpose.”⁴⁵
- **Baltimore Police Department** – “Force is necessary only when no reasonably effective alternative exists. When force is Necessary, members shall use force in a manner that avoids unnecessary injury or risk of injury to members and civilians.”⁴⁶
- **Cleveland Division of Police** – “Officers shall use force only as necessary, meaning only when no reasonably effective alternative to the use of force appears to exist, and then only to the degree which is reasonable to effect the intended lawful objective.”⁴⁷

Recommendation 1.5. APD should refine and expand its treatment of de-escalation in its core force policy – more directly emphasizing that de-escalation is an affirmative duty of all officers in all circumstances.

“De-escalation” refers to tactics, techniques, and strategies for successfully and safely resolving incidents with less significant, minimal, or no force. “The term de-escalation can be viewed as a both an overarching philosophy that encourages officers to constantly reassess

⁴⁴ *Id.*

⁴⁵ Denver Police Department, Operations Manual, Section 105.01(2), Use of Force Policy, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSB_Book/OM_Book.pdf (Sept. 1, 2020).

⁴⁶ Baltimore Police Department, Policy 1115 at 4 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>.

⁴⁷ Cleveland Division of Police, General Police Orders, Use of Force: General at 1, <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>.

each situation to determine what options are available to effectively respond, as well as the grouping of techniques designed to achieve this goal.”⁴⁸

Currently, de-escalation is referenced in one policy paragraph in APD’s core use of force policy:

When practicable sworn members will attempt to use de-escalation techniques to control the situation so that lesser force, or possibly no force, is required. Additionally, when sworn members use force, they will de-escalate the amount of force used when that force is successful, and control is gained.⁴⁹

Although these brief references to de-escalation are not necessarily “wrong,” they do not operationalize or explain de-escalation as a concept as comprehensively or precisely as they should – and they do not sufficiently highlight the overriding importance of deploying techniques and strategies aimed at resolving situations with lesser or minimal force. Topics related to de-escalation are briefly referenced in the policy relating to less-lethal force⁵⁰ but are likewise not substantially detailed.

APD policy should therefore establish that de-escalation is an affirmative duty of law enforcement officers – not something that officers should “attempt” to do but something officers *must* or *shall* do whenever the circumstances permit. For instance:

- **IACP National Consensus Policy on Use of Force** – “An officer shall use de-escalation techniques and other alternatives to higher levels of force consistent with his or her training wherever possible and appropriate before resorting to force and to reduce the need for force.”⁵¹
- **American Law Institute Principles on Use of Force** – “Agencies should require, through written policy, that officers actively seek to avoid using force whenever possible and appropriate by employing techniques such as de-escalation.”⁵²

⁴⁸ International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 6 (Oct. 2017), http://www.theiacp.org/Portals/0/documents/pdfs/National_Consensus_Policy_On_Use_Of_Force.pdf [hereinafter “IACP Consensus Policy”].

⁴⁹ APD Directive 5.03, Section 5.3

⁵⁰ APD Directive 5.08, Section 5.8.

⁵¹ International Association of Chiefs of Police, *National Consensus Policy and Discussion Paper on Use of Force* 3.

⁵² *Principles of the Law: Policing* §5.04 (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.

- **Seattle Police Department** – “When safe, feasible, and without compromising law enforcement priorities, officers shall use de-escalation tactics in order to reduce the need for force.”⁵³
- **New Orleans Police Department** – “When feasible based on the circumstances, officers will use de-escalation techniques, disengagement; area containment; surveillance; waiting out a subject; summoning reinforcements; and/or calling in specialized units such as mental health and crisis resources, in order to reduce the need for force, and increase officer and civilian safety. Moreover, the officers shall de-escalate the amount of force used as the resistance decreases.”⁵⁴

Consequently, a revised treatment of de-escalation should emphasize that the duty to de-escalate is applicable across all incidents and officer performance, regardless of whether the incident ultimately involves force. Some departments have established standalone policies on de-escalation to emphasize that the duty applies regardless of whether an officer ultimately uses force.⁵⁵ Other departments incorporate specific sections addressing de-escalation in their use of force policies that clarify that the affirmative duty to de-escalate applies across encounters and regardless of whether force is used.⁵⁶

Regardless of whether APD chooses to implement a standalone de-escalation policy or expressly incorporates the duty to de-escalate into a more extensive use of force policy, specific policy guidance should inventory the variety of tactics and techniques that can constitute de-escalation. For example, the Cleveland Division of Police’s policy on de-escalation lists a variety of techniques, including but not limited to “[s]eparating oneself from the threat and creat[ing] a safe distance to speak with subject(s),” “[s]lowing down the pace of the incident, from the time officers receive the radio broadcast, and utilizing Division trained anxiety and stress management techniques when necessary,” “[s]trategic communication or voice commands to de-escalate the situation,” and “[i]ncreas[ing] officer

⁵³ Seattle Police Department Manual, Section 8.100: De-Escalation (rev. Sep. 15, 2019), <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

⁵⁴ New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force Policy at 5, *available at* <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/>.

⁵⁵ Baltimore Police Department, Policy 1107, De-Escalation (Nov. 24, 2019), <https://www.baltimorepolice.org/1107-de-escalation>; Cleveland Division of Police, De-Escalation (January 1, 2018), https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018De-Escalation.pdf?id=12397; Seattle Police Department Manual, Section 8.100: De-Escalation (rev. Sep. 15, 2019), <https://www.seattle.gov/police-manual/title-8---use-of-force/8100---de-escalation>.

⁵⁶ New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force (rev. Apr. 1, 2018), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>.

presence, if necessary, to increase strategic options available for bringing a subject under control and/or reduce the severity of the threat.”⁵⁷

Recommendation 1.6. APD should strengthen its policy on providing verbal warnings by clarifying that warnings are required whenever feasible, regardless of the type of force; by requiring that officers identify themselves as law enforcement officers whenever possible; and requiring that officers provide subjects with a reasonable opportunity to comply with officer commands before using force.

APD’s policies therefore appear to instruct officers to provide warnings before using force before using a firearm or a less-lethal instrument like a Taser, OC/pepper spray, or batons. Specifically, APD’s current, primary policy on force requires that officers “give clear verbal warning of the intent to use a firearm or other deadly physical force with sufficient time for the warning to be observed.”⁵⁸ This requirement does not apply if “do[ing] so would unduly place the sworn member at risk of injury or would create a risk of death to other persons.”⁵⁹ Elsewhere, APD’s policy on less-lethal force instruments provides that “[i]f circumstances allow verbalizing and warning without risk to the safety of the member or others, then a verbal warning should be given to the subject.”⁶⁰

21CP appreciates the extent to which APD’s current policy recognizes the import of providing a warning in advance of using deadly force or less-lethal weapons. Still, the logic behind these requirements – that it provides an opportunity for subjects to comply without the need to use force and provides express articulation of an officer’s intent to use force to other on-scene police personnel in a manner that can aid officer coordination and safety – extends easily to the application of *all* types of force. Indeed, providing a warning may be substantially more feasible in situations involving less-significant force and threats than those involving deadly force and threats. If a warning should be provided where feasible before using a firearm or Taser, then a warning should also be provided before applying lower-level types of hands-on physical maneuvers.

Consequently, rather than splitting up the duty to provide a verbal warning among multiple, distinct policy provisions – governing deadly force and less-lethal force, respectively – APD policy should provide unified guidance that officers should provide a warning whenever feasible before using any force. Indeed, if the rule is uniformly applicable across all force

⁵⁷ Cleveland Division of Police, De-Escalation (January 1, 2018), https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018De-Escalation.pdf?id=12397.

⁵⁸ APD Directive 5.03, Section 5.3.4.

⁵⁹ *Id.*

⁶⁰ APD Directive 5.08, Section 5.8.

applications, officer compliance and the Department's ability to audit such compliance is likely to be substantially enhanced.

A number of police departments require a warning before *any* force is used, whether that force is lethal or less-lethal, severe or comparatively less severe:

- **Cleveland Division of Police** – “Where feasible, and to do so would not increase the danger to officers or others, officers shall issue a verbal warning to submit to their authority prior to the use of force.”⁶¹
- **Northampton (Mass.) Police Department** – “When tactically feasible, an officer will identify themselves as a police officer and issue verbal commands and warnings prior to the use of force. When feasible, an officer will allow the subject an opportunity to comply with the officer's verbal commands. A verbal warning is not required in circumstances where the officer has to make a split second decision, or if the officer reasonably believes that issuing the warning would place the safety of the officer or others in jeopardy.”⁶²

Recommendation 1.7. Consistent with the concepts of de-escalation and necessity, APD should consider expressly requiring that officers exhaust all other means reasonably available to them under the circumstances before using deadly force.

A number of police departments require in policy that their officers exhaust all reasonably available alternatives before using deadly force:

- **Newark Police Division** – “In all instances, members should exhaust all other reasonable means before resorting to using force tactics, recognizing that members will use only force which is objectively reasonable and necessary.”⁶³
- **Tampa Police Department** – “Before resorting to the use of deadly force, an officer shall . . . Exhaust all reasonable alternatives.”⁶⁴

⁶¹ Cleveland Division of Police, Use of Force: General, *available at* <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>.

⁶² Northampton (MA) Police Department, AOM Chapter 0-101, Section II-H, *available at* <https://www.northamptonpd.com/administration/policies-and-procedures.html> (last rev. Feb. 2021).

⁶³ Newark Police Division, General Order No. 18-20, Section VII-A-3, <https://www.newarkpdmonitor.com/wp-content/uploads/2019/04/Use-of-Force-Policy.pdf> (Nov. 8, 2018).

⁶⁴ Tampa Police Department, Standard Operating Procedure 537, Section VI-B, <https://www.tampa.gov/document/sop-537-section-v-b8-33471>.

- **State of Tennessee Use of Lethal Force Statute** – An “officer may use deadly force . . . only if all other reasonable means of apprehension have been exhausted or are unavailable”⁶⁵

APD’s policy, quoting Colorado state law, provides that deadly force is authorized only when an officer “has an objectively reasonable belief that a lesser degree of force is inadequate.”⁶⁶ 21CP recommends that APD consider revising its force policy to more directly and affirmatively require that officers exhaust all other reasonable means before using any force, and all other reasonable alternatives before using deadly force. This approach allows officers to respond to deadly threats to others or themselves where the suddenness, imminence, or circumstances of the threat provide no reasonable alternatives while emphasizing the imperative to use such alternatives whenever they are, in fact, available under the circumstances.

Recommendation 1.8. APD’s use of force policy should authorize force only when it is proportional to the nature of the threat that a subject poses under the circumstances.

APD’s current force policy does not sufficiently address the core concept of proportionality. Requiring that an officer’s force be proportional to the nature of a subject’s threat or resistance ensures that an officer’s response will be consistent with or aligned to the significance or gravity of the subject’s actions. “Proportionality requires that any use of force correspond to the risk of harm the officer encounters, as well as to the seriousness of the legitimate law-enforcement objective that is being served by its used.”⁶⁷ The “requirement of proportionality operates in addition to the requirement of necessity” and “means that even when force is necessary to achieve a legitimate law-enforcement end, its use may be impermissible if the harm it would cause is disproportionate to the end that officers seek to achieve.”⁶⁸

APD’s policies contain a few references to the degree or extent of force used.⁶⁹ However, they do not use the term “proportional” or explain the concept that an officer’s response must reasonably correspond to the nature of a subject’s threat.

⁶⁵ 2010 Tennessee Code Title 40, Chapter 7, Part 1, 40-7-108, Resistance to Officer, <https://law.justia.com/codes/tennessee/2010/title-40/chapter-7/part-1/40-7-108#:~:text=%2D7%2D108,-Resistance%20to%20officer,.or%20flees%20from%20the%20arrest.>

⁶⁶ APD Directive 5.03, Section 5.3.3.

⁶⁷ *Principles of the Law: Policing* §5.05 cmt. a (Am. Law. Inst. Revised Tentative Draft No. 1, 2017), available at https://www.ali.org/media/filer_public/f2/80/f2804962-6431-4535-9649-34c5f872140e/policing-uof-online.pdf.

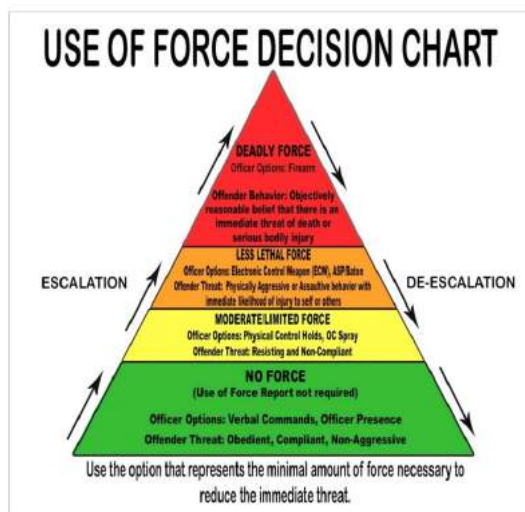
⁶⁸ *Id.*

⁶⁹ APD Directive 5.03, Section 5.3.1 (“When physical force is used, a member shall . . . Use only a degree of force consistent with the minimization of injury to others”); *id.* (allowing an officer to “use a degree of force which he reasonably believes to be necessary” to “defend himself or a third person from what he reasonably believes to be the use or imminent use of unlawful physical force” by a subject);

Over half of the country's fifty largest police departments have a proportionality requirement.⁷⁰ For example:

- **Baltimore Police Department** – “Members shall use only the force Reasonable, Necessary, and Proportional to respond to the threat or resistance and to effectively and safely resolve an incident . . . Proportionality measures whether the force used by the member is rationally related to the level of resistance or aggression confronting the member.”⁷¹
- **Los Angeles Police Department** – “Officers may only use a level of force that they reasonably believe is proportional to the seriousness of the suspected offense or the reasonably perceived level of actual or threatened resistance.”⁷²
- **Newark Police Division** – “Police Division members shall consider a subject's level of resistance when using force . . . The level of control used shall be proportional to the threat or resistance the member encounters”⁷³

Figure 2. Philadelphia Police Department Use of Force Decision Chart⁷⁴



Source: Philadelphia Police Department, Directive 10.2.

⁷⁰ Brandon L. Garrett & Seth W. Stoughton, “A Tactical Fourth Amendment,” 103 *Virginia Law Review* 211 (2017).

⁷¹ Baltimore Police Department, Policy 1115 at 1, 4 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>.

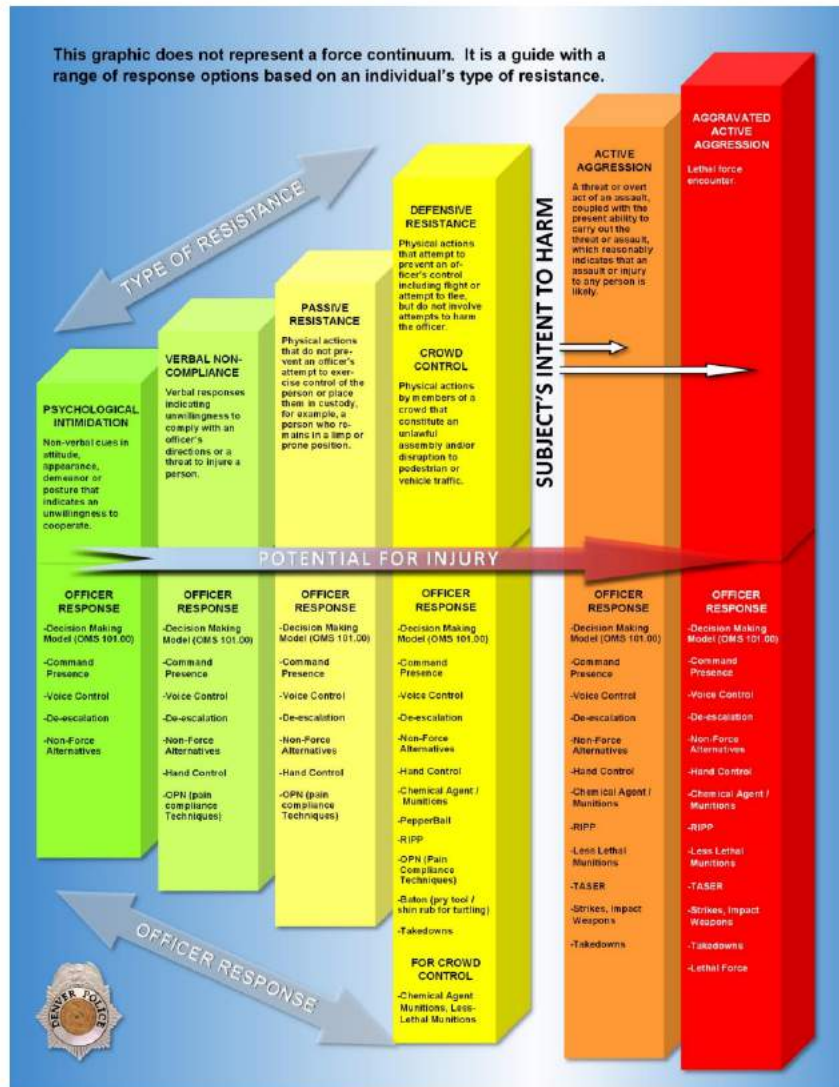
⁷² Los Angeles Police Department, “Policy on the Use of Force – Revised,” (June 29, 2020), https://www.lapdonline.org/home/news_view/66709.

⁷³ Newark Police Division, General Order No. 18-20, Section VII-A-1, <https://www.newarkpdmonitor.com/wp-content/uploads/2019/04/Use-of-Force-Policy.pdf> (Nov. 8, 2018).

⁷⁴ Philadelphia Police Department, Directive 10.2 at 4, <https://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf> (last rev. Sept. 1, 2020).

To capture the concept of proportionality, some jurisdictions have found it useful to create a graphical representation or flowchart categorizing the types of force responses that correspond with various threat levels. These so-called use of force continuums, spectrums, or matrices can clarify the concept that an officer’s force response should be consistent with the nature of the threat. The **Philadelphia Police Department’s** “Use of Force Decision Chart” (see Figure 2) is a prototypical example. The **Denver Police Department** also uses a graphical representation to underscore the correspondence between subject actions and officer response.

Figure 3. Denver Police Department Resistance and Response Chart⁷⁵



Source: Denver Police Department, Operations Manual, Section 105.01.

⁷⁵ Denver Police Department, Operations Manual, Section 105.01, Use of Force Policy at 10, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSB ook/OM_Book.pdf (Sept. 1, 2020).

These graphical representations of force decision-making attempt to illustrate the requirement that an officer's response be closely consistent with the nature of the threat. They also typically underscore the extent to which the nature of such threats, like the selection of force necessary to counter it, may become more or less severe during the course of the same interaction.

However, some police departments and police organizations avoid such force matrices or continuums. For example, the Police Executive Research Forum has recommended against “rel[iance] on rigid, mechanical, escalating continuums of force” because:

[C]ontinuums suggest that an officer, when considering a situation that may require use of force, should think, “If presented with weapon A, respond with weapon B. And if a particular response is ineffective, move up to the next higher response on the continuum . . .

[A]ssessing a situation and considering options as circumstances change is not a steady march to higher levels of force if lower force options prove ineffective. Rather, it entails finding the most effective and safest response that is proportional to the threat. Continued reliance on rigid use-of-force continuums does not support this type of thinking.⁷⁶

Whether APD provides policy language requiring any officer force to be proportional to the threat that a subject poses, adopts a force model or continuum, or does both, the Department should much more specifically and expressly address the imperative for officer responses to be aligned with the nature and significance of a subject's resistance or threat.

Recommendation 1.9. APD should substantially define and describe the core concept of “objective reasonableness,” providing specific guidance to officers on factors that may be a part of the objective reasonableness inquiry. APD policy should clarify that the reasonableness inquiry with respect to force is an objective, not subjective, inquiry.

Current APD policy provides that “[m]embers will only use reasonable and appropriate force; and only when legally justified.”⁷⁷ With respect to the application of force, an officer must have “reasonable ground to believe, and does believe, that he or another person is in imminent danger of being killed or of receiving great bodily injury.”⁷⁸

⁷⁶ Police Executive Research Forum, *Guiding Principles on Use of Force* at 19–20 (2016).

⁷⁷ APD Directive 5.03, Section 5.3.

⁷⁸ APD Directive 5.03, Section 5.3.1.

In *Graham v. Connor*, the Supreme Court articulated the basic, minimum standard under the United States Constitution for police officers to use force.⁷⁹ All use of force must be “objectively reasonable” – or appropriate and consistent with what a reasonable officer would do in light of all the circumstances that the officer who used force encountered.⁸⁰ The propriety of force depends not on the situation and circumstances as subjectively perceived or understood by the involved officer but, instead, on what a reasonable officer, under the circumstances, would have perceived and understood. The involved officer’s “underlying intent or motivation” is not relevant.⁸¹ In this way, the “underlying intent” or “subjective motivations of the individual officers . . . ha[ve] no bearing on whether a particular seizure is ‘unreasonable’ under the Fourth Amendment.”⁸² This standard is analogous to the “reasonable person” standard, stating that the law applies more generally in the context of harm to others – where the inquiry is based on what a reasonable person, in the shoes of the individual actually involved, would have done under the circumstances.⁸³

Currently, the concept of *objective* reasonableness surfaces only in APD policy’s re-printing of the Colorado state statute relating to the use of deadly force.⁸⁴ APD’s policy should more specifically address the requirement that force is permitted only when it is objectively reasonable under the circumstances:

- **New Orleans Police Department** – “[O]fficers of the New Orleans Police Department shall use the minimum amount of force that the objectively reasonable officer would use in light of the circumstances to effectively bring an incident or person under control, while protecting the lives of the member or others.”⁸⁵
- **Seattle Police Department** – “An officer shall use only force that is objectively reasonable”⁸⁶

⁷⁹ 490 U.S. 387 (1989).

⁸⁰ *Id.* at 397. (“[T]he ‘reasonableness’ inquiry . . . is an objective one: the question is whether the officer’s actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them.”).

⁸¹ *Id.*

⁸² *Id.*

⁸³ See Stephen G. Gilles, “On Determining Negligence: Hand Formula Balancing, the Reasonable Person Standard, and the Jury,” 54 *Vanderbilt Law Review* 813, 822-23 (2001) (“For as long as there has been a tort of negligence, American courts have defined negligence as conduct in which a reasonable man . . . would not have engaged.”).

⁸⁴ APD Directive 5.03, Section 5.3.3.

⁸⁵ New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force at 5 (rev. Apr. 1, 2018), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>.

⁸⁶ Seattle Police Department Manual, Section 8.000: Use of Force Core Principles (rev. Sep. 15, 2019), <http://www.seattle.gov/police-manual/title-8---use-of-force/8000---use-of-force-core-principles>.

- **United States Department of Homeland Security** – An officer “shall use only the force that is objectively reasonable in light of the facts and circumstances confronting him or her at the time force is applied.”⁸⁷
- **Campaign Zero Model Use of Force Policy** – “Law enforcement officers shall use physical force only when it is objectively reasonable, necessary, and proportional to effectively and safely resolve a conflict.”⁸⁸

In addition to, expressly articulating the requirement that any force be *objectively* reasonable to conform to minimum constitutional standards, APD policy should also describe in greater detail the types of parameters and factors that enter into the objective reasonableness determination. Although an objective reasonableness inquiry may function for judges in the comfort of their courtrooms assessing a given application of force after it has happened, the standard is vague and potentially challenging for officers to apply without more particular, real-world guidance. Accordingly, APD policy should directly inventory the types of circumstances that relate to the objective reasonableness of force. For example:

- **Las Vegas Metropolitan Police Department** – “Objective factors that affect the reasonableness of the force include:
 1. The severity of the crime.
 2. Whether the subject poses an immediate threat to the safety of officers or others.
 3. Whether the subject is actively resisting arrest or attempting to evade arrest by flight.
 4. The influence of drugs/alcohol or the mental capacity of the subject.
 5. The time available to an officer to make a decision.
 6. The availability of officers or resources (including the number of officers present at the time) to de-escalate the situation.
 7. The proximity or access of weapons to the subject.
 8. The environmental factors and/or other exigent circumstances.⁸⁹
- **New Orleans Police Department** – “When determining whether to use force and in evaluating whether an officer has used reasonable force, the facts and

⁸⁷ U.S. Department of Homeland Security, Memorandum re: Department Policy on Use of Force (Sept. 7, 2018), https://www.dhs.gov/sites/default/files/publications/mgmt/law-enforcement/mgmt-dir_044-05-department-policy-on-the-use-of-force.pdf.

⁸⁸ Campaign Zero, Model Use of Force Policy, <https://static1.squarespace.com/static/56996151cbced68b170389f4/t/5defffb38594a9745b936b64/1576009651688/Campaign+Zero+Model+Use+of+Force+Policy.pdf> (last accessed Apr. 13, 2021).

⁸⁹ Las Vegas Metropolitan Police Department, Directive No. PO-035-20, Use of Force, <https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/PO-035-20%20Use%20of%20Force.pdf> (last rev. May 15, 2020).

circumstances, when they are known or reasonably should be known by the officer, that should be considered include, but are not limited to:

- (a) The seriousness of the suspected offense or reason for contact with the individual;
- (b) Whether the subject poses a threat of injury to himself, officers or others, and the immediacy and severity of the threat;
- (c) The conduct of the individual being confronted as reasonably perceived by the officer at the time;
- (d) Officer/subject factors (age, size, relative strength, skill level, injuries sustained, level of exhaustion or fatigue, and the number of officers versus subjects);
- (e) The effects of drugs or alcohol;
- (f) The subject's mental state or capacity;
- (g) Proximity to weapons or dangerous improvised weapons/devices;
- (h) The degree to which the subject has been effectively restrained and his/her ability to resist despite being restrained;
- (i) The availability of other options and their possible effectiveness;
- (j) The training and experience of the officer;
- (k) The environment wherein the event is occurring;
- (l) Whether the person appears to be resisting in an active, aggressive, or aggravated manner;
- (m) The risk of escape;
- (n) The apparent need for immediate control of the subject for a prompt resolution of the situation versus the ability to step back, regroup and develop an alternative approach and the time available to the officer to make a decision;
- (o) Whether the conduct of the individual being confronted no longer reasonably appears to pose an imminent threat to the officer or others; and
- (p) Any other exigent and articulable circumstances.⁹⁰

Recommendation 1.10. APD policy should specifically prohibit various problematic types of force.

As of June 9, 2020, APD policy was revised to expressly prohibit the chokehold and carotid control holds.⁹¹ Citing Colorado statute, the definition of chokehold appears to appropriately encompass any physical maneuvers that risk cutting off the supply of blood or oxygen to an individual's brain.

⁹⁰ New Orleans Police Department, Operations Manual, Chapter 1.3, Use of Force at 7 (rev. Apr. 1, 2018), <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-Use-of-Force-EFFECTIVE-4-01-18.pdf/>.

⁹¹ APD Directive 5.08, Section 5.8.3.

This type of clear prohibition on a class of force is the sort of specific guidance to officers that, in addition to inventorying the types of factors that go into the reasonableness inquiry as described above, helps them apply force only where appropriate. Indeed, APD’s current policy on Less Lethal Devices and Weapons (Directive 5.08) contains a small list of specific circumstances in which less-lethal force is prohibited, such as against subjects who are “securely handcuffed” and who “submit[] peacefully to arrest and compl[y] with lawful commands during the arrest.”⁹² In this way, current APD already appears to embrace the logic of policy outlining specific guidelines and “rules of the road” for applying force that provide officers with greater detail about what is and is not permitted.

Accordingly, APD should join the ranks of departments that specifically prohibit various problematic types of force that are almost never objectively reasonable, necessary, or proportional. These include:

- **Techniques and/or modes of transport that run a substantial risk of positional asphyxia.** Positional asphyxia is “death as a result of body position,” typically a face-down body position, “that interferes with one’s ability to breathe.”⁹³ The issue of positional asphyxia is referenced in Directive 5.8.9 in the context of hobble restraints, but APD policy should specifically require that APD officers not position or orient individuals in a manner that threatens a subject’s ability to breathe. For example, the **New York Police Department** requires that officers, across all use of force encounters, “[p]osition the subject to promote free breathing, as soon as safety permits, by sitting the person up or turning the person onto his/her side.”⁹⁴
- **Use of force to subdue a subject who is not suspected of any criminal conduct.** Force used against subjects not suspected of criminal conduct is unlikely to be necessary, proportional, and reasonable and should therefore be expressly prohibited. The **Cleveland Division of Police** prohibits officers from using “force to subdue a subject(s) who is not suspected of any criminal conduct, other than to protect an officer’s or another person’s safety”⁹⁵
- **Use of force against individuals who are solely engaged in exercising their First Amendment rights.** Because individuals who are solely engaged in

⁹² APD Directive 5.08, Section 5.8.

⁹³ National Law Enforcement Technology Center, National Institute of Justice, “Positional Asphyxia—Sudden Death” (June 1995) at 1, <https://www.ncjrs.gov/pdffiles/posasph.pdf>.

⁹⁴ New York Police Department, P.G. 221-02, Use of Force, https://www1.nyc.gov/assets/ccrb/downloads/pdf/investigations_pdf/io_35_16-use-of-force.pdf (May 31, 2016).

⁹⁵ Cleveland Division of Police, General Police Orders, Use of Force: General, <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>.

the exercise of their First Amendment rights do not, even if noncompliant with officer commands, pose an imminent threat of physical harm to officers or others, use of force against such individuals is unlikely to be necessary, proportional, and reasonable.

The use of force against individuals only engaged in First Amendment activity appears to be referenced in APD Directive 5.08, Section 5.8, which provides that officers should not use less-lethal weapons against a subject who “[i]s expressing mere verbal disagreement or directing offensive language at a member or another individual that does not present an imminent threat”⁹⁶ However, that section applies only to less-lethal instruments and does not explicitly apply to other types of force (such as hands-on physical maneuvers) that do not involve less-lethal instruments. APD should extend the logic of this current language into a general, straightforward prohibition on force against individuals solely engaged in First Amendment activity.

- **Use of force against subject(s) who only verbally confront officers.** As noted, current APD policy prohibits officers from using less-lethal instruments against subjects who are only verbally confronting officers. APD policy should more broadly prohibit the use of any force, regardless of whether the type of force is a less-lethal weapon, a hands-on physical maneuver, or something else.
- **Use of retaliatory force.** APD policy should expressly prohibit retaliatory force, which – because it is force deployed to “pay a subject back” rather than because the subject is posing a threat – is not necessary, proportional, or objectively reasonable under the circumstances.
- **Use of force against subject(s) who are handcuffed or otherwise restrained.** The application of force to an individual who is already handcuffed or restrained will almost always be disproportionate to the nature of the threat, unnecessary, and objectively unreasonable. Current APD policy on less-lethal instruments provides that less-lethal weapons should “not be used against a subject who is securely handcuffed (except in extreme situations).” However, this existing policy does not apply to types of force that do not involve less-lethal instruments (hands-on physical maneuvers, etc.). Furthermore, current APD policy does not adequately define what constitutes an “extreme situation[]” in which force applied to a handcuffed or restrained individual would nonetheless be appropriate (and, presumably, necessary, proportional, and objectively reasonable). APD policy should prohibit, across *all* types of force (rather than only less-lethal instruments), the use of force against handcuffed or restrained subjects. The **Cleveland Division of Police** prohibits “force against subject(s) who are

⁹⁶ APD Directive 5.08, Section 5.8.

handcuffed or otherwise restrained, as the threat that the individual could pose has been dramatically reduced, if not eliminated, because of the restraint.”⁹⁷

- **Use of force to overcome only passive resistance.** The **Cleveland Division of Police’s** use of force policy defines “passive resistance”:

Passive Resistance: Refers to instances in which a subject does not comply with an officer’s commands and is uncooperative but is nonviolent and prevents an officer from placing the subject in custody and/or taking control. Passive resistance may include but is not limited to standing stationary and not moving upon lawful direction, falling limply and refusing to move (dead weight), holding onto a fixed object, linking arms to another during a protest or demonstration, or verbally signaling an intention to avoid or prevent being taken into custody.⁹⁸

That department, like many others, prohibits the use of force against subjects who are only passively noncompliant or resistant because such force will almost always be found to be unnecessary, disproportionate to the threat, and unreasonable under the circumstances. APD policy should expressly preclude the use of force against individuals who are only passively resisting.

- **Use of head strikes with hard objects unless deadly force is authorized under the circumstances.** Strikes to the head pose a particular, elevated risk of serious injury and death. Accordingly, many departments classify strikes to a person’s head with an impact weapon or hard object as deadly force that may be applied only where a firearm or other type of deadly weapon could be applied and no reasonable alternatives are available.⁹⁹ APD should similarly prohibit strikes to a subject’s head across all situations except those in which deadly force would be authorized and no other reasonable alternatives are available.

⁹⁷ Cleveland Division of Police, General Police Orders, Use of Force: General, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018General.pdf (Jan. 1, 2018).

⁹⁸ Cleveland Division of Police, General Police Orders, Use of Force: Definitions, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018Definitions.pdf?id=12396 (Jan. 1, 2018).

⁹⁹ Baltimore Police Department, Policy 1115 at 8 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>; see also Seattle Police Department, Manual, Section 8.050, Use of Force Definitions, <http://www.seattle.gov/police-manual/title-8---use-of-force/8050---use-of-force-definitions> (last rev. June 19, 2020).

- **Use of firearm as an impact weapon.** As the **Denver Police Department’s** policy on force indicates, “[f]irearms are not an appropriate impact weapon because of the inherent danger of an accidental discharge.”¹⁰⁰ APD policy should prohibit the use of firearms as impact weapons.
- **Firing of warning shots.** Current APD policy appears to prohibit the firing of “warning shots, unless, in exceptional cases where no lesser degree of force would be effective or practical and the firing of a warning shot is the only alternative to the use of deadly force.”¹⁰¹ It is not readily apparent to 21CP precisely when the firing of a warning shot – which can by definition only be effective not through physical impact but through the psychological effects of a subject appreciating the firing of an officer’s firearm – would be the only effective or practical force option because all other force options had been tried and failed or were not feasible under the circumstances. APD should join departments like the **Baltimore Police Department** that instruct officers simply that “[f]iring warning shots is prohibited.”¹⁰²

Recommendation 1.11. APD’s policies, procedures, and training should guide officers to seek a medical-based response whenever they encounter individuals they believe are experiencing “excited delirium.”

APD policy relating to so-called hobble restraints references the term “excited delirium.”¹⁰³ Issues relating to excited delirium surfaced in the death of Elijah McClain and the Independent Review Panel’s investigative report.¹⁰⁴ However, no APD policy clearly defines or explains what “excited delirium” is or how officers should best and most safely respond to individuals who they believe, based on the circumstances, may be experiencing the effects of such “excited delirium.”

The validity and utility of the concept of “excited delirium” has been a subject of increasing criticism and debate within the policing, emergency response, and medical professions.¹⁰⁵ If

¹⁰⁰ Denver Police Department, Operations Manual, Section 105.01, Use of Force Policy, https://www.denvergov.org/content/dam/denvergov/Portals/720/documents/OperationsManual/OMSBBook/OM_Book.pdf (Sept. 1, 2020).

¹⁰¹ APD Directive 5.1, Section 5.1.3.

¹⁰² Baltimore Police Department, Policy 1115 at 9 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>.

¹⁰³ APD Directive 5.08, Section 5.8.9.

¹⁰⁴ *Independent Review Panel Investigation Report* at 58.

¹⁰⁵ Compare Joshua Budhu, Méabh O’Hare, & Atlaf Saadi, “How ‘Excited Delirium’ Is Misused to Justify Police Brutality,” *Brookings.edu* (Aug. 10, 2020), <https://www.brookings.edu/blog/how-we-rise/2020/08/10/how-excited-delirium-is-misused-to-justify-police-brutality/> with Roger W. Byard, “Ongoing Issues With the Diagnosis of Excited Delirium,” 14 *Forensic Science, Medicine and Pathology* 149 (2018), <https://link.springer.com/article/10.1007/s12024-017-9904-3#ref-CR18>; see also *Independent Review Panel Investigation Report* at 118 (“The Panel notes the existence of multiple

APD continues to find the concept useful as a means of having officers identify individuals who may be in a particularly vulnerable physical or mental state, APD's efforts to provide more specific response protocols for how to gain the assistance of EMT, Fire, or other professionals when they believe that an individual may be exhibiting signs of "excited delirium" may be appropriate. Some police departments indeed have full policies that provide details on identifying and responding to instances of "excited delirium."¹⁰⁶

APD indicated to 21CP that, going forward, it will be instructing officers that excited delirium is a medical diagnosis and that officers are not to make medical diagnoses. The Department indicates that it is currently formulating additional policy guidance on how APD should formally transition responsibility from police to emergency medical personnel in circumstances where individuals are exhibiting potential signs of "excited delirium." Those protocols will instruct APD personnel to focus on describing the subject's specific physical signs, symptoms, or indicators (such as sweating, unexpected physical strength, signs of panic or paranoia, and the like) to medical personnel rather than suggesting a clinical diagnosis. Additionally, APD referred 21CP to training it has provided to officers on "recogniz[ing] signs of excited delirium and positional asphyxia" and providing appropriate care and medical attention to individuals who may be exhibiting signs of "excited delirium."¹⁰⁷

Recommendation 1.12. APD's general use of force policy and its current specific firearms policy should better address issues involving exhibiting and pointing firearms.

APD should provide specific policy guidance on when officers may unholster, draw, and exhibit firearms. Furthermore, the Department should ensure that these instances are reported. Recognizing that "drawing or exhibiting a firearm may limit an officer's alternatives in controlling a situation, may create unnecessary anxiety on the part of the public, and may result in an unwarranted or unintentional discharge of the firearm," the **Seattle Police Department** prohibits officers from drawing or exhibiting a firearm unless "the officer has reasonable cause to believe it may be necessary for his or her own safety or

controversies surrounding excited delirium, including ongoing debate regarding whether excited delirium is a legitimate diagnosis and whether "the diagnosis is...used by law enforcement to legitimize police brutality and to retroactively explain certain deaths occurring in police custody."").

¹⁰⁶ Seattle Police Department, Manual, Section 16.135, Excited Delirium, <https://www.seattle.gov/police-manual/title-16---patrol-operations/16135---excited-delirium> (last rev. May 7, 2019); City of Champaign, *Excited Delirium Response Protocol*, http://www.aele.org/delirium/champaign_police_protocol.pdf (last rev. Nov. 2009).

Sonoma County Sheriff's Department, Policy 309, Excited Delirium (Sept. 27, 2006).

¹⁰⁷ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 2.

for the safety of others.”¹⁰⁸ The **Los Angeles** and **Las Vegas Metropolitan Police Departments** maintain nearly identical policy requirements.¹⁰⁹

Pointing a firearm *at* someone, rather than unholstering a weapon or keeping a firearm at the *sul* or “low ready position,” constitutes a “seizure” under the Fourth Amendment¹¹⁰ – because a reasonable person in the situation would not feel free to leave. Departments from **Oakland** to **Seattle** to **Cleveland** all consider pointing a weapon *at* an individual to constitute reportable use of force.¹¹¹

APD currently considers “intentionally point[ing] a firearm” to be a “Tier Zero, Statutory Use or Display of Force.” Although officers must make a notation in the Computer Aided Dispatch system that they have pointed a firearm, and supervisors are instructed to “ensur[e] the appropriate CAD notation/s are added,” such “Tier Zero” force does not appear to be the subject of meaningful post-force review.

This report elsewhere discusses recommendations for APD to modify its force reporting and classification scheme. Consistent with those recommendations, APD should consider the pointing of a firearm *at* an individual to constitute force warranting completion of a Use of Force Report and substantive, post-application supervisory review.

21CP observes here that, depending on the circumstances, officers are often justified in exhibiting their firearm or pointing a firearm at an individual. In many instances, the safety of officers and bystanders requires a firearm to be immediately available to officers. The purpose of this recommendation is not to discourage the exhibiting or pointing of a firearm in all instances. Instead, the recommendation here is simply that APD (1) align its policies

¹⁰⁸ Seattle Police Department Manual, 8.300, available at <https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools>.

¹⁰⁹ Los Angeles Police Department, Use of Force Policy Section 556.10, http://www.lapdonline.org/lapd_manual/volume_1.htm#556; Las Vegas Metropolitan Police Department, Use of Force Policy, Section 6/002.00, available at <https://www.lvmpd.com/en-us/InternalOversightConstitutionalPolicing/Documents/Use-of-Force-Policy-2017.pdf>.

¹¹⁰ *Thompson v. Rahr*, 885 F.3d 582, 586 (9th Cir. 2018) (concluding that the pointing of a firearm at an individual was not objectively reasonable and that the force was “not minor”); *accord Baird v. Renbarger*, 576 F.3d 340 (7th Cir. 2009) (finding that the pointing of a gun at an individual could be unreasonable under the Fourth Amendment without a threat to the safety of officers or others); see also Oakland Police Department Manual, General Order K-3, Use of Force Policy at 7, <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf> (“The pointing of a firearm at a person is a seizure and requires legal justification.”).

¹¹¹ Seattle Police Department Manual, 8.300, available at <https://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools>; Cleveland Division of Police, General Police Orders, Use of Force: General at 1, <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/582c54ac59cc685797341239/1479300270095/Dkt.+83--Use+of+Force+Policies+with+Exhibits.pdf>; Oakland Police Department Manual, General Order K-3, Use of Force Policy at 6, <http://www2.oaklandnet.com/oakca1/groups/police/documents/webcontent/oak053209.pdf>.

to legal requirements, and (2) ensure that officers report when they do exhibit or point their firearm so that the Department can better review and analyze officer performance in the field.

APD indicated to 21CP that it “will explore the ability to use” a new electronic records environment to track the exhibition and pointing of firearms and that it will be “outlin[ing] a stronger review process in policies for these instances by the first-line supervisor.”¹¹²

Recommendation 1.13. APD’s general use of force policy and its current specific firearms policy should include provisions that better ensure the safety of other officers and bystanders when officers use firearms.

APD should consider providing officers with guidance or warning about the risks firearm discharges present to other officers or bystanders who may be positioned nearby. A revised policy may require that officers consider their surroundings, or “backdrop,” to a reasonable extent under the circumstances, before using a firearm – and should not discharge their firearm unless the target is clearly in view.¹¹³

- **Detroit Police Department** – “Use of deadly force is only authorized . . . [a]gainst a subject who poses an imminent threat of death or serious bodily injury to the officers or others, *and only when bystanders are not in jeopardy*”¹¹⁴

With respect to issues of backdrop and the safety of other individuals when discharging a firearm, APD referred 21CP to its current Directive 5.01, “Authorized Firing of a Weapon.” Although the policy provisions there do address important issues relating to “always be[ing] certain of the target and beyond” when discharging a weapon,¹¹⁵ 21CP recommends that APD’s policy revision process include more specific policy guidance to officers on assessing the proximity and location of other officers and members of the public.

Recommendation 1.14. APD should more clearly require that all officers carry, and be trained on, less-lethal instruments.

¹¹² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 2.

¹¹³ See *U.S. v. City of Ferguson*, Consent Decree, No. 4:16-cv-00180-CDP (D. Mo., 2016), ¶ 143.

¹¹⁴ Detroit Police Department Manual, Section 304.2 – 4.2, Deadly Force, <http://static1.squarespace.com/static/56996151cbced68b170389f4/t/57584dea22482e86c03111b3/1465404906983/DPD+Manual+Use+of+Force.pdf> (emphasis added).

¹¹⁵ APD Directive 5.01.

Equipping officers with less-lethal tools has been associated with a lower rate of injuries for both officers and civilians.¹¹⁶ Numerous police department policies specifically require that officers carry less-lethal instruments:

- **Cleveland Division of Police** – “Uniformed officers shall carry the Conducted Electrical Weapon (CEW) if qualified, and a second intermediate weapon: ASP baton or Oleoresin Capsicum (OC) Spray. If not CEW qualified, officers shall carry both approved intermediate weapons: ASP baton and OC Spray. Officers may elect to carry all three intermediate weapons.”¹¹⁷
- **Seattle Police Department** – “Uniformed officers are required to carry at least one less lethal tool. Uniformed officers who have been issued a TASER shall carry it.”¹¹⁸

APD policy authorizes the use of less-lethal weapons, but, as presently worded, it is not as clear as it could be as to whether APD officers are required to carry them.¹¹⁹ APD told 21CP that Directive 5.8 “mandates uniformed officers carry OC spray or a taser.”¹²⁰ 21CP recommends that this current expectation be more clearly articulated in policy in the manner of policies like those of Cleveland and Seattle referenced above.

Recommendation 1.15. APD policy should provide expanded, more specific direction on the use of various, authorized less-lethal instruments.

APD policy currently provides some policy guidance related to various types of less-lethal instruments that officers are authorized to carry.¹²¹ Although such guidance is useful, it should be expanded and more specific.

Given the detailed nature of some of the instrument-specific considerations, this report cannot exhaustively endeavor all potential policy guidance that APD may find useful to provide to officers in expanded policy guidance on less-lethal force. We do briefly present

¹¹⁶ John M. MacDonald, et al, “The Effect of Less-Lethal Weapons on Injuries in Police Use-of-Force Events,” 99 *American Journal of Public Health* 2268, 2268 (2009) (finding that the “[i]ncidence of . . . injuries can be reduced dramatically when law enforcement agencies responsibly employ less-lethal weapons in lieu of physical force”).

¹¹⁷ Cleveland Division of Police, General Police Order, Section 2.01.04, Use of Force – Intermediate Weapons, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/01.10.2018IntermediateWeapons.pdf?id=12399 (Jan. 1, 2018).

¹¹⁸ Seattle Police Department, Policy Manual, Section 8.050 – Use of Force Tools, <http://www.seattle.gov/police-manual/title-8---use-of-force/8300---use-of-force-tools> (June 19, 2020).

¹¹⁹ APD Directive 5.08.

¹²⁰ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 3.

¹²¹ APD Directive 5.08.

some additional policy guidance that APD should consider across some of the most-common less-lethal instrument types.

Tasers

- Require that officers “[c]arry Tasers in weak-side holsters (i.e., on the side of their nondominant hand) to reduce” the risk of accidental discharge.¹²²
- Require that officers make a reasonable effort to handcuff subjects between each cycle.¹²³
- Prohibit “[u]sing Tasers against various high-risk groups, such as pregnant women, older people, young children, or people who are visibly frail.”¹²⁴
- Prohibit applying Tasers to “vulnerable body parts, such as the head, neck, chest, or groin.”¹²⁵
- Prohibit officers “[u]sing more than one Taser against one person at one time.”¹²⁶
- Prohibit officers from using Tasers in “‘drive-stun’ mode, which causes pain but not loss of muscle control.”¹²⁷
- Prohibit officers from deploying Tasers “for the sole reason of preventing flight.”¹²⁸

Batons/Impact Weapons

- Classify “strikes to vulnerable body parts” as “lethal force because of their high risk of serious injury and death.”¹²⁹ (Current APD policy indicates that “members should avoid targeting the head, neck, throat, heart, kidneys, spine, groin, and

¹²² The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 137 (2019). APD observes that Directive 5.08 was “recently . . . revised to mandate weak-side draw for tasers.” Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 3. The policy requires that officers “position the Taser holster in a manner to draw the Taser with the support hand.” APD Directive 5.08. 21CP suggests that, to ensure maximum clarity, APD consider adopting more specific language simply requiring weak-side holsters rather than any potential position that the officer might determine would be consistent with permitting weak-side draw.

¹²³ Axon, General Taser Procedures, Using a Taser CEW, *Cuffing Under Power*, <https://help.axon.com/hc/en-us/articles/360016312533-Cuffing-under-Power#:~:text=Applying%20handcuffs%20to%20a%20subject,safety%20to%20officers%20and%20subjects> (last visited Apr. 14, 2021).

¹²⁴ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 137 (2019).

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ *Id.*

¹²⁹ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 138 (2019).

knee joint areas”¹³⁰ but is not specific as to why, nor is such guidance a clear prohibition on such use.)

- Prohibit “[u]sing flashlights or other hard objects in place of batons.”¹³¹

OC/Pepper Spray

- Provide guidance that “especially in windy conditions” OC spray “can hit people other than intended targets, including other officers.”¹³²
- Prohibit “[u]sing pepper spray on passive resisters or to disperse crowds.”

Canines

- Develop a comprehensive Canine Deployment Manual that addresses a host of critical safety concerns specific to the deployment of canines.¹³³

APD represents that its “[t]raining already includes most of the specific bullet points in this recommendation” and that it “will work” with contemplated consultants to consider changes to the Department’s policy on less-lethal instruments.¹³⁴

Recommendation 1.16. APD should more concretely articulate a requirement that officers have an affirmative duty to render and/or request medical assistance whenever necessary after force is used.

The subject of medical aid following the application of force is referenced in a few different ways in APD’s current policies. Reprinting Colorado state statutes, APD’s general policy on force (Directive 5.03, Use of Physical and Deadly Force) indicates that “[w]hen physical force is used, a member shall . . . Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable”¹³⁵ Although this guidance appropriately emphasizes that officers should “ensure” that medical attention is provided, the language of the statute alone does not clarify whether officers themselves have an affirmative duty to render the aid or if, instead, the statutory obligation is reasonably acquitted by promptly requesting fire or EMS to respond to the scene and provide aid.

¹³⁰ APD Directive 5.08, Section 5.8.5.

¹³¹ *Id.*

¹³² The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 139 (2019).

¹³³ See California Commission on Police Officer Standards and Training, *Law Enforcement K-9 Guidelines* (Jan. 2014), https://post.ca.gov/Portals/0/post_docs/publications/K-9.pdf; San Jose Police Department, *Canine Unit, Policy and Procedural Manual* (March 2018), http://www2.sjpd.org/records/pc-13650_library/Unit%20Guidelines/Canine%20Unit%20SOP%20%20March%202018_Redacted.pdf.

¹³⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 3.

¹³⁵ APD Directive 5.03, Section 5.3.1.

Separately, Directive 5.08, Less Lethal Devices, Weapons and Techniques provides that “[w]hen less lethal weapons are used on a subject, appropriate and reasonable first aid, medical attention or decontamination will be provided to the subject.”¹³⁶ Even as this policy guidance relates to the use of specific less-lethal instruments and not any application of force more generally, the policy’s specific protocols focus nearly exclusively on fire and EMS response rather than on the steps that APD steps should take to provide first aid or medical assistance.¹³⁷ APD’s Officer Involved Shootings policy is more direct in providing that “the involved member will remain responsible for . . . rendering first aid and requesting necessary emergency medical aid.”¹³⁸

Police agencies increasingly are providing specific, clear requirements that officers themselves must render medical aid, whenever necessary, following a use of force encounter.

- **New Orleans Police Department** – “Immediately following a use of force, officers and supervisors shall inspect and observe subjects for injury or complaints of pain. Officers shall obtain medical assistance for any person who exhibits signs of physical distress, has sustained visible injury, expresses a complaint of injury or continuing pain, or who was rendered unconscious. This may require officers to render emergency first aid within the limits of their individual skills, training and available equipment until professional medical care providers arrive on the scene. Any individual exhibiting signs of physical distress after an encounter should be continuously monitored by the officer involved in the incident or an on-scene assisting officer until medical personnel can assess the individual”¹³⁹
- **Philadelphia Police Department** – “After employing any force, including lethal or less lethal weapons, officers shall render appropriate medical aid and request further medical assistance, when necessary for the suspect and any other injured individuals, as soon as it is safe to do so. Any aid provided shall be documented in the appropriate report.”¹⁴⁰

APD should accordingly clarify in its policy that, after the application of any type or level of force, officers have an affirmative duty to provide medical assistance whenever necessary and to summon medical aid as soon as possible under the circumstances. Even as current APD policies address the concept of medical aid across a patchwork of disparate policies, a streamlined, unified requirement addressing the rendering of medical assistance following

¹³⁶ APD Directive 5.08, Section 5.8.11.

¹³⁷ *Id.*

¹³⁸ APD Directive 5.06, Section 5.6.2.

¹³⁹ New Orleans Police Department Use of Force Policy, at 6, *available at* <https://www.nola.gov/getattachment/NOPD/NOPD-Consent-Decree/Chapter-1-3-Use-of-Force.pdf/>.

¹⁴⁰ Philadelphia Police Department, Directive 10.2 at 5, <http://www.phillypolice.com/assets/directives/D10.2-UseOfModerateLimitedForce.pdf>.

any use of force will provide more streamlined, straightforward guidance to officers in the field and may result in better medical outcomes for subjects injured in force encounters.

Recommendation 1.17. APD’s duty to intervene should apply whenever an officer witnesses another officer engaging in conduct or behavior that runs a reasonable risk of violating APD policy or applicable law.

“Duty to intervene” policies – requiring officers to intervene when they observe potential misconduct – have been associated with fewer officer-involved deaths,¹⁴¹ and most officers indicate that they should be required to intervene to stop excessive force and improper conduct.¹⁴²

APD’s current policy indicates that an officer “shall, when in a position to do so given the totality of the circumstances, safely and immediately intervene to prevent another sworn member from using physical force that exceeds the degree of force permitted by CRS § 18-1-707”¹⁴³ Therefore, APD’s policy requires intervention when an officer witnesses another officer violating Colorado state law but not when an officer witnesses an officer acting in a manner that is contrary to APD policy.

Furthermore, APD policy confusingly links the duty to particular types of enforcement contexts rather than across any and all interactions of any type or manner. Specifically, the intervention requirement is activated only when another officer is “carrying out an arrest of any person, placing any person under detention, taking any person into custody, booking any person, or in the process of crowd or riot control”¹⁴⁴ It is not immediately clear that observing an officer engaging in illegal behavior or misconduct in other contexts activates the duty to intervene.

Even more generally, APD’s policy on intervention is linked predominantly to the use of force. Even as this duty is particularly important in the use of force context, the duty to intervene should be extended across all officer performance – such that an officer must intervene whenever they observe instances of potential misconduct.

The Department should revise its policy to provide clearer, simpler guidance that clarifies the duty to intervene as applying in all circumstances. Specifically, it should clarify that an officer has an affirmative duty to intervene whenever an officer observes another officer running a reasonable, or (in the alternative) a foreseeable, risk of violating the Department’s

¹⁴¹ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 141 (2019).

¹⁴² *Id.* (citing Rich Morin et al., Pew Res. Ctr., *Behind the Badge: Amid Protests and Calls for Reform, How Police View Their Jobs, Key Issues and Recent Fatal Encounters Between Blacks and Police* 13 (2017)).

¹⁴³ APD Directive 5.09, Section 5.9.1.

¹⁴⁴ *Id.*

use of force policy, and a reasonable officer would determine that intervention is safe and feasible under the circumstances. For instance:

- **Baltimore Police Department** – “All members must recognize and act upon the affirmative duty to Intervene to prevent or stop any member from conducting any act that is unethical or that violates law or policy, including, but not limited to:
 - 1.1. Excessive force, including intentionally escalating an encounter absent a lawful, necessary purpose,
 - 1.2. Stops, searches, and arrests that are unconstitutional or violate BPD policy,
 - 1.3. Discriminatory policing (See Policy 317, Fair and Impartial Policing),
 - 1.4. Retaliation against an individual participating in 1st Amendment protected activity,
 - 1.5. Theft/fraud/waste,
 - 1.6. Inappropriate language including discourteous language to members of the public,
 - 1.7. Sexual misconduct,
 - 1.8. Harassment,
 - 1.9. Falsifying documents, and
 - 1.10. Inappropriate behavior.

Additionally, members have an affirmative duty to Intervene when they see unsafe behavior and/or bad tactics, corner-cutting, and signs of a fellow member’s stress and/or mental health issues that are affecting their performance¹⁴⁵

Current APD policy helpfully, and commendably, details some of the types of actions that officers may take to intervene in the context of another officer engaging in inappropriate force – which include “[v]erbal or physical intervention;” “[i]mmediate notification to a supervisor;” and “[a] direct order by a supervisor to cease the use of unreasonable force.”¹⁴⁶ However, as APD looks to expand the scope of the duty to intervene to all potential misconduct, it should empower officers with skills, tactics, training, and confidence to effectively and actively intervene where warranted – that is, to immediately intervene in the moment and on the scene rather than relying on a supervisor to respond and intervene. To this end, APD indicates that it is currently implementing training on peer intervention provided by the

¹⁴⁵ Baltimore Police Department, Policy 319, Duty to Intervene, <https://public.powerdms.com/BALTIMOREEMD/documents/355131#:~:text=The%20purpose%20of%20this%20policy.existing%20duty%20to%20report%20Misconduct.intervene> (Dec. 4, 2020).

¹⁴⁶ APD Directive 5.09, Section 5.9.1.

national Active Bystandership for Law Enforcement (“ABLE”) Project.¹⁴⁷ The full implementation of the ABLE initiative is a strong, forward-thinking commitment that has the potential to empower officers across ranks to promote and support high standards of ethical performance.

Recommendation 2. APD should ensure that it provides regular training to all personnel on force decision-making and de-escalation strategies. As with APD’s training overall, this training should include dynamic, integrated, skills-focused, and scenario-based training grounded in adult learning techniques.

Traditional law enforcement training approaches too often “focuses on range shooting, classroom-based learning, and minimal exposure to realistic scenarios.”¹⁴⁸ Often, officers are required to passively consume large streams of content about rules, laws, and regulations rather than having an opportunity to practice implementing skills or confronting real-world problems.

Consequently, President Obama’s Task Force on 21st Century Policing emphasized the “need for realistic, scenario-based training to better manage interactions and minimize force”¹⁴⁹ As the Leadership Conference for Civil Rights has recommended, “[o]fficers should practice, in interactive environments . . . de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making.”¹⁵⁰ In the same way that continued training for pilots puts them in flight simulators to practice the response to real-world flight scenarios,¹⁵¹ effective law enforcement training presents real-world scenarios and asks officers to practice responding and implementing practical decision-making skills. Many practical strategies grounded in adult learning techniques are effective police instruction, including verbal scenarios, group discussions analyzing officer performance from an incident captured on video, role playing, demonstration, group analysis of scenario performance, “teach-backs” in which students provide instruction to fellow students on designated topics, and many others.¹⁵²

¹⁴⁷ Georgetown Law Innovative Policing Program, *Active Bystandership for Law Enforcement (ABLE) Program*, <https://www.law.georgetown.edu/innovative-policing-program/active-bystandership-for-law-enforcement/> (last visited Apr. 14, 2021).

¹⁴⁸ Judith P. Andersen, et al, “Highly Realistic Scenario Based Training Simulates the Psychophysiology of Real World Use of Force Encounters: Implications for Improve Police Officer Performance,” 5 *Journal of Law Enforcement* 1, 1 (2016), https://tspace.library.utoronto.ca/bitstream/1807/73822/3/highly_realistic_scenario_based.pdf.

¹⁴⁹ *Final Report of the President’s Task Force on 21st Century Policing* 52 (2015).

¹⁵⁰ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 143 (2019).

¹⁵¹ See, e.g., Marcel Bernard, “Real Learning Through Flight Simulation: The ABCs of ATDs,” FAA Safety Briefing (Sept./Oct. 2012), https://www.faa.gov/news/safety_briefing/2012/media/SepOct2012ATD.pdf.

¹⁵² NHI Instructor Development Course 1, 2, <https://www.nhi.fhwa.dot.gov/downloads/freebies/172/pr%20pre-course%20reading%20assignment.pdf> (last accessed Jan. 17, 2021).

Below, this report provides recommendations to APD about enhancing and updating its overall training approach and function by incorporating adult learning techniques, dynamic instructional paradigms, skills-based lesson plans, and scenario-based exercises.

With respect to use of force training, it appears that APD has previously used an extensive number of scenarios and practical exercises in their basic academy training. For instance, within its firearms training course, which encompasses 72 hours, student officers complete 12 hours of “decisional shooting” training and 30 hours of “tactical situations” – which both appear to be situation-based skills training.¹⁵³ Separately, in 2019, APD conducted a “skills week” as a part of basic Academy training. Each day, student officers proceeded through a wide range of scenarios or vignettes to test what they have learned, with Academy personnel providing feedback on their performance. Based on information made available to 21CP, it was not clear whether this “skills week” was a standard part of Academy training in other years.

Critically, 21CP had difficulty identifying training materials – whether for new APD officers in the Academy or current APD officers for in-service training – specifically addressing de-escalation. Although content covered in a two-hour class on “special populations” and an 8-hour instructional block on verbal defense and influence appeared to cover at least some concepts related to de-escalation, de-escalation did not seem regularly, squarely addressed as a core topic of APD training in years between 2015 and 2019.

Especially with respect to in-service training, instruction has not tended to be focused on decision-making skill development. In 2019, APD in-service training was approximately 18 hours, including 6 hours of arrest control training, 8 hours regarding firearms, and 4 hours on emergency vehicle operation (“EVOC”). In 2018, in-service training focused on firearms, Tasers, and driving techniques. Although elements relating to tactical and force decision-making, and de-escalation, were scattered across some elements of the training, content that might fairly be associated with de-escalation was not as highlighted as it likely should be going forward.

APD represented to 21CP that it “will explore implementing a specific de-escalation class” going forward.¹⁵⁴ It noted that “including de-escalation in all aspects of training is a viable method of reinforcing the concept” and referred 21CP to a training PowerPoint presentation on de-escalation and an instruction, printed in a poster format, entitled “Rules to Promote Voluntary Compliance.”¹⁵⁵ 21CP agrees that this type of continual, ongoing reinforcement of de-escalation skills and strategies is critical. We would urge APD to continue to evaluate its

¹⁵³ Officers are required to complete eight hours of classroom instruction and 32 hours on the range prior to engaging in scenario training.

¹⁵⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 3.

¹⁵⁵ *Id.*

training programs, and overall training approach, to provide officers with the ability to practice and develop real-world skills through mechanisms that promote the resolution of incidents with minimal or no force.

Recommendation 3. APD policy should better outline what officers must describe and articulate in narratives regarding the use of force.

APD’s policy on force reporting (Directive 5.04) is specific and commendably aligns with a best-practice approach to force reporting. In classifying reportable force into various “Tiers” based on the severity or significance of the force, APD’s policy allows for post-incident response, investigation, and review to be indexed to the nature of the force deployed in the manner that policies in cities like **Baltimore**¹⁵⁶ and **Seattle**¹⁵⁷ do.

APD could further improve its force reporting policy by providing more specific guidance to officers on what use of force reports, and narrative accounts of use of force encounters, should include. Specifically, APD’s current policies outline when officers need to notify the Department that force has been used and what the departmental response to such force will be. However, APD’s policies would be enhanced by including the general information that should be included in an officer’s narrative account of what transpired (at least for those Tier One and Tier Two uses of force in which the officer, per APD policy, is unlikely to be interviewed). For example:

- **New Orleans Police Department** – “The officer [using or witnessing force] shall independently prepare his or her Force Statement and include facts known to the officer, to include:
 - (a) A detailed account of the force incident from the officer’s perspective;
 - (b) The reason for the initial police presence, e.g.: response to (nature of) call, on-view suspicious activity (describe the suspicious activity), flagged by a citizen (nature of citizen’s concern), shots fired, or screams heard, etc.;
 - (c) A specific description of the acts that led to the use of force;
 - (d) The specific description of resistance encountered;
 - (e) A description of every type of force used or observed;
 - (f) Names of all assisting officers and supervisors participating in the actions leading up to the use of force;
 - (g) The name of the supervisor the involved officer notified, and the time of the notification;

¹⁵⁶ Baltimore Police Department, Policy 1115 (Nov. 24, 2019), <https://www.baltimorepolice.org/1115-use-force>.

¹⁵⁷ Seattle Police Department, Policy Manual, Section 8.400 – Use of Force Reporting and Investigation, <http://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation> (Apr. 15, 2021).

- (h) The name of the supervisor who responded to the scene;
 - (i) Names, if know, of any civilian witnesses;
 - (j) A description of any injuries suffered by the officer, subject, or witnesses;
 - (k) Whether a body-worn camera was activated and its identifiable file location;
 - (l) Whether a vehicle camera was activated and its identifiable file location; and
 - (m) Whether a CEW activation occurred, even if the CEW was not discharged.¹⁵⁸
- **Cleveland Division of Police** – Officers using force must “provid[e] a detailed account of the incident from the officer’s perspective and including all of the following information:
 - a. The reason for the initial police presence
 - b. A specific description of the acts that preceded the use of force, to include attempts to de-escalate
 - c. The level of resistance encountered
 - d. A complete and accurate description of every type of force used or observed[.]¹⁵⁹

To this end, APD referred 21CP to a “Guide for Writing Use of Force Reports” prepared by the Force Investigation Unit (“FIU”), which was “emailed to officers” and posters of which “will be placed in the report-writing rooms at all districts.”¹⁶⁰ 21CP agrees that the material in that guide provide the type of specific, practical instructions to officers that are necessary to ensure thorough reporting. We would still recommend that APD incorporate expectations for what should be included in a use of force report directly in the Department’s core operational policies rather than auxiliary documentation – and that the Department provide continual instruction to officers on report writing.

Recommendation 4. APD should ensure that use of force reporting is standardized and uniform with respect to aggregate data.

As this report has referenced elsewhere, the quality and completeness of Department’s current data on use of force could and should be improved. For instance, the race and/or

¹⁵⁸ New Orleans Police Department, Chapter 1.3.6, Reporting Use of Force at 4–5 <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-1-3-6-Reporting-Use-of-Force-EFFECTIVE-4-01-18.pdf> (last rev. Apr. 1, 2018).

¹⁵⁹ Cleveland Division of Police, General Police Order 2.01.05, Use of Force – Reporting at Section III-A (Apr. 5, 2019), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d810f7314d346709f38f943/1568739188208/Ex+D+Reporting.pdf>.

¹⁶⁰ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 3.

gender of the subject of use of force was not identified in current data in nearly one-quarter (24 percent) of incidents. Although some demographic information may be captured in narrative or incident reports, rather than in the type of force reporting that can easily aggregate data, the Department needs to ensure that basic information about its enforcement and response activities is, indeed, captured in an easily aggregable and analyzable format – so that it and external stakeholders can have accurate, real-time views on the overall performance of the Department across the Aurora community. Likewise, the 111 distinct types into which force applications were classified over the period of 2016 through 2020 makes identifying trends and patterns more difficult than it should be. Ultimately, APD’s goal should be to make basic and vital information about force encounters easily accessible and easy to evaluate on the face of the quantitative data recorded. The Department tells 21CP that it has secured funding for procuring a new electronic system that “should provide the ability to organize and gathering uniform aggregate data,” the implementation of which “is pending IT scheduling.”¹⁶¹

Recommendation 5. APD policy should outline more specific procedures and guidelines for the conduct of post-force investigation and review.

Although Directive 5.04, Reporting and Investigating the Use of Tools, Weapons and Physical Force, provides substantial and sound detail on *reporting* force, and on how the department responds to notification that an officer has used force, APD policy provides comparatively little detail on how force incidents are investigated, reviewed, and adjudicated.

Specifically, the policy provides that, based on the level or “Tier” of force, use of force incidents are investigated either by a supervisor or an investigative unit determined by the Investigations Bureau Commander. However, it does not provide sufficiently specific protocols about how the investigation should proceed to ensure a fair, thorough, and timely investigation.

21CP recommends that Directive 5.04 be revised, or an additional directive be added, to address the mechanics of the force investigation itself – as well as the mechanics of chain of command review of force investigations. Departments like the **Seattle Police Department** articulate specific procedures and protocols for investigations – including conducting interviews, whether investigators reach findings or simply articulate facts, how video is collected and reviewed, and the like.¹⁶² Since 21CP was not provided with any independent manuals or auxiliary protocols regarding the conduct of force investigations, APD should consider establishing more formalized protocols with the weight of policy that govern the conduct of force investigations.

¹⁶¹ *Id.* at 4.

¹⁶² Seattle Police Department, Policy Manual, Section 8.400 – Use of Force Reporting and Investigation, <http://www.seattle.gov/police-manual/title-8---use-of-force/8400---use-of-force-reporting-and-investigation> (Apr. 15, 2021).

APD indicates that “[w]ith the creation of FIU (Force Investigation Unit), post-force investigations and review” are “more comprehensive and will ensure a fair, thorough and timely investigation.”¹⁶³ “Policy will be updated to reflect current practices.”¹⁶⁴ 21CP recommends that provided Standard Operating Procedures for FIU be more comprehensively and exhaustively detailed in Departmental material having the full weight and effect of policy.

Recommendation 6. APD should update its policies and procedures for its Force Review Board to ensure objective, fair, timely, and comprehensive review and adjudication of use of force incidents.

Consistent with best practices, APD policy currently provides for the convening of a Force Review Board (“FRB”) “to review Use of Force Reports” – or, specifically, all Tier Two and Tier Three force.¹⁶⁵ Where the FRB determines that “a use of force was in violation of policy, or that there is insufficient information to make a determination, the FRB” sends the force report to the Internal Affairs Bureau for investigation.¹⁶⁶

Even as the policy is clear as to *what* is reviewed, it could be much more specific as to *how* the FRB should consider and evaluate uses of force. 21CP recommends that additional policy guidance be provided to ensure uniform and thorough review. In particular, policy should require that the Board analyze all individual applications of force for fidelity to all APD policy provisions. An FRB deliberation checklist may assist the Board in making the appropriate structure determinations across various types of force.¹⁶⁷

Additionally, the FRB’s current decision-making process is based on consensus, with the FRB’s Chair making determinations where a consensus is not possible.¹⁶⁸ APD should consider modifying this to ensure that the FRB votes in all instances, with Board decisions “made by majority vote.”¹⁶⁹

¹⁶³ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 4.

¹⁶⁴ *Id.*

¹⁶⁵ APD Directive 5.04, Section 5.4.7.

¹⁶⁶ *Id.*

¹⁶⁷ See Seattle Police Department, Policy Manual, Section 8.500, Reviewing Force, <https://www.seattle.gov/police-manual/title-8---use-of-force/8500---reviewing-use-of-force> (Apr. 15, 2021).

¹⁶⁸ APD Directive 5.04, Section 5.4.7.

¹⁶⁹ Seattle Police Department, Policy Manual, Section 8.500, Reviewing Force, <https://www.seattle.gov/police-manual/title-8---use-of-force/8500---reviewing-use-of-force> (Apr. 15, 2021).

In June 2021, APD noted to 21CP that “[t]he FRB has updated its procedures with the creation of the Force Investigation Unit (FIU) as being the sole investigative arm of FRB.”¹⁷⁰ Additionally, “[p]olicy will be updated . . . during the Use of Force policy review and re-write.”¹⁷¹ A provided FRB case review template that outlines, providing a structured array of considerations and questions for FRB to take into account during evaluations of force incidents, appears, based on a preliminary review, to be a promising platform for innovation.

Stops, Searches and Arrests

Recommendation 7. APD should substantially revise and expand its current policy Directives Manual to address, in detail, the conduct of stops, detentions, searches, and arrests.

APD’s current directives fail to provide substantive guidance to its members on the legal requirements necessary to effect constitutional stops, searches and arrests. Although the Department’s manual is voluminous and includes policies governing a vast host of subject-matter areas, it is largely void of any explanation of core Fourth Amendment legal standards relating to non-voluntary encounters. Beyond highly cursory and incomplete guidance on stops generally in Section 8.32.1 and traffic stops in Section 8.32.2, within APD’s policy on Bias-Based Policing (discussed further below), APD’s policies do not meaningfully address when and how officers may initiate a stop, detain an individual, and search individuals within those non-voluntary encounters.

The absence of key legal concepts and standards leaves APD members without sufficient direction necessary to carry out their duties lawfully and appropriately. It is a significant omission that the Department should correct expeditiously. Laws and obligations surrounding stops, searches, seizures, and arrests are notoriously complicated.¹⁷² The differences among various types of encounters with individuals, the boundaries and restrictions on various types of searches, and the requisite levels of legal justifications that officers must have before conducting various types of stops, searches, and arrests are complex and nuanced. Instead of providing specific guidance on these issues, APD is silent on these fundamental issues of constitutional import.

¹⁷⁰ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 4.

¹⁷¹ *Id.*

¹⁷² See generally Stephen Budiansky, “Rescuing Search and Seizure,” *The Atlantic* (Oct. 2020), <https://www.theatlantic.com/magazine/archive/2000/10/rescuing-search-and-seizure/378402/> (observing that Fourth Amendment-related legal “rules are hard for a layperson to make much sense of,” with the application of various exceptions to the warrant requirement especially “bewildering”).

Many of APD's peer departments maintain specific, detailed guidance within their policies on when and how various types of stops, searches, and arrests may and may not be permissible. For instance:

- **Baltimore Police Department** – Among other policies, the agency maintains a comprehensive, standalone policy on “Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches.” It provides guidance on the legal requirements and parameters governing interactions ranging from voluntary contacts to arrests, including traffic stops.¹⁷³
- **New Orleans Police Department** – The department maintains policies on Search and Seizure generally, Stops/*Terry* Stops, Search Warrants, and Vehicle Stops.¹⁷⁴
- **Cleveland Division of Police** – The agency maintains separate but inter-related policies on Search and Seizure, Investigatory Stops, Strip Searches & Body Cavity Searches, Probable Cause/Warrantless Arrests, and Miranda Warnings & Waivers.¹⁷⁵

The policies of these agencies not only provide guidance to officers on when officers may initiate a stop but on what they may do during such non-voluntary encounters and when and how such encounters may conclude.

21CP understands that the Department has recently issued a video training to officers on Fourth Amendment-related issues. As APD provides more specific and comprehensive guidance to officers on these issues, in-person, scenario-based training grounded in contemporary adult education techniques will be critical for ensuring meaningful implementation of new expectations.

In response to this recommendation in June 2021, APD indicated that “[p]olicy will be updated as determined to provide guidance and referencing training material provided in videos being produced.”¹⁷⁶ The Department provided 21CP with a training video on search and seizure and a script for another training video on high-risk traffic stops that is currently

¹⁷³ Baltimore Police Department, Policy 1112: Field Interviews, Investigative Stops, Weapons Pat-Downs & Searches (Oct. 12, 2020), <https://www.baltimorepolice.org/1112-draft-field-interviews-investigative-stops-weapons-pat-downs-and-searches>.

¹⁷⁴ New Orleans Police Department, Chapters 1.2.4, 1.2.4.3, available at <https://www.nola.gov/nopd/policies/> (last visited Jan. 17, 2021).

¹⁷⁵ City of Cleveland, Search and Seizure Policies, <http://www.city.cleveland.oh.us/CityofCleveland/Home/Government/CityAgencies/PublicSafety/Police/PoliceSettlementAgreement/SearchandSeizures> (last visited Jan. 17, 2021).

¹⁷⁶ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 4.

being produced. The search-and-seizure training video is an approximately 32-minute “talking head”-style presentation that moves quickly through topics including the legal standards for stops, searches, and seizures; reasonable suspicion; probable cause; consent; and effective communication. Although the presentation covers useful content, the style of presentation – and the references to case law, statutes, and directives and the need for officers to independently review such material – is not as dynamic or as grounded in adult learning techniques as it could be. Separately, although 21CP’s review could not yield more details without seeing the final version of the video based on the script addressing high-risk traffic stops, the script shows some promise toward APD integrating more pragmatic, scenario-focused instructional approaches.

Recommendation 8. APD should provide personnel with detailed, dynamic, and scenario-based training on consensual interactions and non-consensual encounters between police and members of the public – including stops, detentions, searches, and arrests.

As this report describes elsewhere, APD, like other police departments, provides ongoing, in-service training to current police officers. This training amounts to continuing professional education for officers that enhances their knowledge base, allows for the development of new skills, and refreshes potentially perishable skills and substantive knowledge.

APD provided 21CP with training materials used for in-service training for the years 2015 through 2020. Even as APD provided substantial training on topics such as the Taser, control hold techniques, and a variety of force maneuvers, the Department does not appear to have provided officers with in-service training on stops, searches, and seizures. Topics relating to arrest focused on physical tactics for successfully taking someone into custody rather than applicable legal requirements and policy considerations.

This report elsewhere recommends that APD overhaul its approach to ongoing, in-service training for current APD officers. With respect to stops, searches, and arrests, APD should, consistent with the suggested new training paradigm, provide comprehensive training to officers on the law and new APD policies on stops, searches, and arrests. That training should provide significant, scenario-based opportunities for officers to practice decision-making with respect to initiating, conducting, and concluding stops. In 21CP’s experience, the type of adult learning techniques that other recommendations urge APD to incorporate into its training – such as role-playing, verbal scenarios, the viewing and discussing of video scenarios, and the like – are especially well-suited to stops, searches, seizures, and arrests.

In response to this recommendation, APD notes:

APD agrees with this recommendation and will research how other agencies are accomplishing this kind of training during in-service. Scenario-based

training requires staff, time, resources, and funding in small group learning sessions. Existing scenarios are primarily done in recruit training or Crisis Intervention Team (CIT) training. The Academy has recently doubled the training time on this recommendation for recruits.¹⁷⁷

Recommendation 9. APD should require officers to document, and provide specific information about, all interactions with the public that are not voluntary.

Current APD Directive 8.10 provides details on when reporting is required by APD officers. These circumstances are when (1) a citizen reports a crime or complaint; (2) an officer is dispatched for service; (3) an officer is assigned an investigation or to take action; (4) an officer makes an arrest; or (5) an officer issues a summons.¹⁷⁸

No APD policy currently requires that officers document, log, or provide information about all of their stop encounters. Even if officers alert dispatch that they are stopping an individual, this often provides no information about the legal justification for the encounter, who was involved in the encounter, what happened during the encounter, and what the outcome of the encounter may have been. Thus, even if some details about a stop incident may or may not be logged in the Department’s Records Management System or Computer-Aided Dispatch system, information about the specific nature and grounds of the incident need to be more systematically logged.

Practically, the Department does not know when its officers are involuntarily stopping and detaining individuals and what transpires during such interactions. By not requiring that officers provide detailed information about any and all non-voluntary encounters they have with members of the public, APD supervisors, the Department in general, elected officials, and community members alike are essentially “flying blind” with respect to what officers are doing in the field and how frequently officers are engaging in activity that activates important constitutional and legal considerations.

Because “[s]top data collection is an essential practice for every law enforcement agency, no matter how small or specialized,”¹⁷⁹ APD policy should expressly require that, for all non-voluntary encounters – that is, all those that implicate significant Fourth Amendment considerations and guidelines because they are interactions in which a reasonable subject, under the circumstances, would not feel free to leave – officers provide information about:

¹⁷⁷ *Id.* at 5.

¹⁷⁸ APD Directive 8.10, Section 8.10.

¹⁷⁹ Marie Pryor, et al, Center for Policing Equity & Policing Project at NYU School of Law, *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities* 13 (2020), <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5f7335d7294be10059d32d1c/1601385959666/COPS-Guidebook+Final+Release+Version.pdf>.

- The location of the investigatory stop or encounter;
- The race, ethnicity, gender, and age of the subject;
- A specific, free-response description of the legal justification for the stop or encounter (such as the reasonable articulable suspicion necessary to justify a *Terry* stop);
- The duration of the stop or encounter;
- Whether a frisk or other search was conducted, and what, if anything, was discovered pursuant to the search; and
- The outcome of the interaction (such as an arrest, citation, warning, or the interaction concluding without any specific action or activity).¹⁸⁰

Indeed, there is an ever-growing body of national guidance on the topic of systematically capturing information about non-voluntary police-civilian interactions.¹⁸¹

21CP emphasizes here that collecting information about individual stops does not involve the collection of “data” for the sake of it. Instead, it involves logging critical information about important encounters that go to the heart of issues of police legitimacy, equity, public confidence, and overall community well-being.

APD has indicated to 21CP that it is in the process of implementing a new data collection platform that will assist it in gathering information about stop encounters. It has also indicated that Colorado Senate Bill 217 and House Bill 1250 may likely require data collection consistent with this recommendation.¹⁸²

Recommendation 10. To enhance officer safety, expand the quality of supervision, and provide meaningful opportunities for the department to understand its overall performance, APD policy should articulate clear requirements for supervisory review and aggregate analysis of overall trends regarding stops, searches, and arrests.

¹⁸⁰ See, e.g., Cleveland Division of Police, General Order, Investigatory Stops (Apr. 25, 2019), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d81088a7a152a6219030763/1568737418788/Ex+B+Investigatory+Stops.pdf> (listing required types of information and data that officers must report).

¹⁸¹ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 104–05 (2019); Marie Pryor, et al, Center for Policing Equity & the Policing Project at NYU School of Law, *Collecting, Analyzing, and Responding to Stop Data: A Guidebook for Law Enforcement Agencies, Government, and Communities* (2020), https://policingequity.org/images/pdfs-doc/COPS-Guidebook_Final_Release_Version_2-compressed.pdf.

¹⁸² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 5.

The reporting of all non-voluntary encounters enhances the abilities of supervisors to monitor and review officer performance as appropriate and of the Department to analyze and understand how it is interacting with the public overall.

With respect to supervisory review, APD policy should require that supervisors review the documentation of all non-voluntary encounters to ensure that the stops were conducted in a manner consistent with relevant legal standards and policy requirements. Many departments require supervisors to review officer stops:

- **New Orleans Police Department** – “After receiving a submitted FIC [Field Interview Card, which documents stops], a supervisor of the submitting officer’s unit shall review the FIC to determine if each stop, frisk, or search was supported by documentation of reasonable suspicion of probable cause; whether it is consistent with NOPD regulations, policy, and federal and state law; and whether it showed a need for corrective action or review of agency policy, strategy, tactics, or training”¹⁸³
- **Cleveland Division of Police** – “Supervisors shall review all documentation of investigatory stops for completeness and adherence to law and Division policy.”¹⁸⁴
- **Newark Police Division** – “All entered investigative stop data information will be reviewed and approved by the appropriate desk . . . by the end of the submitting officer’s tour of duty . . . Investigative stop entries failing to meet the reasonable suspicion standard shall be rejected”¹⁸⁵

By ensuring that officers document and supervisors review all stops, APD policy can ensure meaningful, real-time accountability and can provide substantive feedback to officers about the quality and nature of their performance.

In addition to reviewing individual stops and particular officer performance, the collection of information on stops can allow APD to conduct regular aggregate analyses of stop data. Department-wide trends across individual stops implicate the efficacy and efficiency of the department, staffing and workload demands, the effectiveness of various departmental approaches aimed at addressing crime and public safety issues, and the identification of

¹⁸³ New Orleans Police Department, Operations Manual, Chapter 41.12, Field Interview Cards ¶ 25, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-12-Field-Interview-Card-EFFECTIVE-12-20-20.pdf/?lang=en-US> (Dec. 20, 2020).

¹⁸⁴ Cleveland Division of Police, General Police Orders, Investigatory Stops, <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5d81088a7a152a6219030763/1568737418788/Ex+B+Investigatory+Stops.pdf> (Apr. 25, 2019).

¹⁸⁵ Newark Police Division, General Order 18-14, <https://www.newarkpdmmonitor.com/wp-content/uploads/2019/04/Stops-Policy.pdf> (Dec. 31, 2018).

group-based disparities among enforcement activities. APD observes that its new data analytics and records platform will facilitate this type of analysis.¹⁸⁶

Bias-Free Policing

Recommendation 11. APD should revise its current policy on bias (Directive 08.32, “Biased Based Policing”) to provide more specific and detailed guidance to officers.

APD’s current policy addressing bias-based policing is Directive 8.32. It defines biased-based policing and expressly prohibits officers from taking “enforcement action based on a trait common to a group, without actionable intelligence to support consideration on that trait,” including race, ethnicity, gender, national origin, language, religion, sexual orientation, gender identity, age, and disability.¹⁸⁷

21CP recommends that APD revise its policy to include, first, a broader statement of the values that drive the Department’s requirements relating to bias-free policing. This stronger, broader statement can better reflect that “bias-free policing is a critical cornerstone for upholding professional ethics in law enforcement” and that “public trust and confidence can be easily destroyed if we let biased decision making control police behavior or to serve as a short cut in performing law enforcement duties.”¹⁸⁸ For instance:

- **Newark Police Department** – “It is the policy of the Newark Police Division that all decisions and actions by members shall be fair, impartial, and free of bias and unlawful discrimination. This policy applies equally to all law enforcement activities and the provision of all police services.

Bias-based conduct is strictly prohibited Treating a person differently based upon that person’s specific characteristics degrades the public’s confidence in the Division and is detrimental to effective law enforcement because it fosters distrust in the community and undermines the Division’s ability to enforce the law.”¹⁸⁹

- **Seattle Police Department** – “The Seattle Police Department is committed to providing services and enforcing laws in a professional, nondiscriminatory, fair, and equitable manner. The Department recognizes that bias can occur at both an

¹⁸⁶ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 5.

¹⁸⁷ APD Directive 8.32, Section 8.32.

¹⁸⁸ International Association of Chiefs of Police, *Bias-Free Policing* (Nov. 1, 2003), <https://www.theiacp.org/resources/resolution/bias-free-policing-0>.

¹⁸⁹ Newark Police Division, General Order 17-06), <http://www.newarkpdmmonitor.com/wp-content/uploads/2018/07/NPD-Bias-Free-Policing-Policy.pdf> (Sept. 19, 2017).

individual and an institutional level and is committed to eradicating both. Our objective is to provide equitable police services based upon the needs of the people we encounter. The intent of this policy is to increase the Department's effectiveness as a law enforcement agency and to build mutual trust and respect with Seattle's diverse groups and communities."¹⁹⁰

Second, like the Newark policy above, APD's policy should reflect that bias-free policing principles extend to all of an officer's activities and actions – and not just “enforcement action.”¹⁹¹ For instance, it is not clear that APD's current bias-free policing policy would extend to issues arising in the context of voluntary encounters, individuals expressing a desire to make a complaint, and other circumstances.

Third, most of APD's current policy on biased-based policing focuses on either instances where issues surrounding bias most frequently arise (pedestrian and traffic stops) or where individuals make complaints alleging bias. As noted above, the policy guidance surrounding stops is insufficiently specific. The other policy guidance on complaints is useful but does not address core officer performance. The **Newark** and **Seattle** policies cited above contain substantially more general guidance to officers relating to bias-free and discriminatory policing issues. APD should likewise expand its treatment of these issues in revised policies.

APD says that “[t]he newly added Community Relations Section Manager will be establishing and implementing guidance on Diversity, Equity and Inclusion (DEI) training which has already occurred” and that “[p]olicies will continue to be updated as guidelines are established.”¹⁹²

Recommendation 12. APD should provide training to officers about revisions to its policies relating to bias, the histories and experiences of Aurora's diverse communities, and cross-cultural communication.

To implement updated policies on bias-free policing, and to enhance officer awareness of the histories and experiences of communities from across Aurora, APD should collaborate with the community to design in-service training for all officers on bias-free policing, discriminatory policing concerns, the histories and experiences of Aurora's communities, and approaches to optimize understanding and empathy in cross-cultural exchanges.

¹⁹⁰ Seattle Police Department, Policy Manual, Section 5.140, Bias-Free Policing, <https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing> (Aug. 1, 2019).

¹⁹¹ APD Directive 8.32, Section 8.32.

¹⁹² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 5.

President Obama’s Task Force on 21st Century Policing recommended that “[l]aw enforcement agencies . . . engage community members in the training process.”¹⁹³ In some jurisdictions, this type of engagement has included community members giving input into the type and design of training provided to officers in order to ensure that instruction reflects the specific needs and characteristics of their communities. In others, community members serve as presenters or instructors for relevant training, which can be especially impactful where the training focuses on experiences, backgrounds, and histories of particular communities. Regardless of the form and type of engagement, police-community collaboration on officer training can enhance the quality of training and foster enhanced police-community relationships.

To this end, APD conducted a training on diversity, equity, and inclusion in February 2021 via Zoom with an outside facilitator for Department personnel, which 21CP attended. Even as future opportunities could benefit from in-person training opportunities and the addition of expanded community voice, 21CP personnel found the training to be an important start to ongoing training in the area. We also understand from APD representatives that additional cultural competency training will be provided by APD’s Chief Community Relations Officer going forward, in addition to culturally-specific training conduct by community leaders. “APD has already incorporated community members of color into our Academy Training curriculum where their experiences involving police are shared with the recruits.”¹⁹⁴

Recommendation 13. APD policy should require the regular, independent analysis of data on officer and aggregate departmental performance to determine if any of its activities, programs, or enforcement approaches are having a disproportionate impact on specific groups, communities, or types of individuals.

As discussed previously in the context of non-voluntary encounters, the Department needs to regularly and systematically analyze data on officer performance to determine if any of its activities, programs, or approaches may be disproportionately affecting particular groups, communities, or individuals. That is, across all forms and types of officer performance and APD activities, collected information should be systematically analyzed to determine whether the Department’s performance or activities are having unwanted, disparate impacts.

Police departments are increasingly working with their communities to formalize approaches to systematically consider the ways that their activities may be burdening or affecting some individuals more, or differently, than others. For instance, the **Seattle Police Department’s** policy on bias-free policing commits that department “to eliminating policies

¹⁹³ *Final Report of the President’s Task Force on 21st Century Policing* 54 (2015).

¹⁹⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 6.

and practices that have an unwarranted disparate impact on certain protected classes.”¹⁹⁵ To foster this objective, the policy expressly requires the department to “periodically analyze data which will assist in identification of SPD practices . . . that may have a disparate impact on particular protected classes relative to the general population Where unwarranted disparate impacts are identified and verified,” the Department must work with community stakeholders to identify if, “equally effective alternative practices . . . would result in less disproportionate impact.”¹⁹⁶

Commendably, APD told 21CP that its “staff will reach out [to] other agencies to gauge current best practices for gathering and reporting this data.”¹⁹⁷ The process of a law enforcement agency systematically gathering data about its activities, analyzing such information to determine if the burdens or impacts are falling disproportionately on particular populations or communities, and exploring whether alternative approaches could address or alleviate disparity is critical to implementing a comprehensive approach to policing that is committed to equity and fairness.

Recommendation 14. APD should make information about complaints relating to bias, profiling, and discrimination available on its website, along with information about the adjudication of investigations of such complaints.

“Open data in areas like public complaints, officer-involved deaths, and use of force provides the foundation for informed research, policy reforms, and oversight.”¹⁹⁸ The United States Conference of Mayors indicates that “[i]n an effort to promote transparency, departments should . . . publicly report data related to biased policing.”¹⁹⁹

Although APD “provides an annual report that is posted online which includes information pertaining to officer complaints,”²⁰⁰ as part of an ongoing commitment to identify and address bias in a meaningful and transparent manner, APD should make information about civilian complaints pertaining to bias, profiling, and discriminatory policing available on its website. In doing so, the Department should provide information about the status and/or ultimate adjudication of such complaints. APD tells 21CP that it “will reach out to other agencies that

¹⁹⁵ Seattle Police Department Policy Manual Section 5.140, Bias-Free Policing, <https://www.seattle.gov/police-manual/title-5---employee-conduct/5140---bias-free-policing>.

¹⁹⁶ *Id.*

¹⁹⁷ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 6.

¹⁹⁸ Open Government Partnership, *Transparency and Accountability at the Frontlines of Justice: Police Data Transparency* (July 8, 2020), <https://www.opengovpartnership.org/documents/transparency-and-accountability-at-the-frontlines-of-justice-police-data-transparency/>.

¹⁹⁹ The United States Conference of Mayors, *Equality and Due Process*, <https://www.usmayors.org/issues/police-reform/equality-and-due-process/> (last visited Apr. 20, 2021).

²⁰⁰ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 6.

have interactive complaint tools to determine best practices and feasibility for implementation.”²⁰¹

Crisis Intervention

Recommendation 15. APD and the City of Aurora should either recommit to the full implementation of its current CIT model or consider implementing alternative response mechanisms to individuals experiencing mental health and behavioral crisis.

The Centers for Disease Control estimates that more than 50 percent of Americans will be diagnosed with a mental health disorder at some point in their life; one in five will experience a mental illness in any given year; and approximately one in 25 Americans are living with a chronic, serious mental illness, such as schizophrenia, bipolar disorder, or major depression.²⁰² Consequently, police officers frequently respond to situations involving individuals experiencing mental health, substance abuse, and other behavioral health challenges. Indeed, studies suggest that as many as 10 percent of all police encounters with the public involve individuals experiencing a behavioral health crisis.²⁰³

Especially over the past 20 years, some communities and their police departments have looked to provide specific tools, resources, or mechanisms for addressing the particular needs of individuals experiencing mental and behavioral health crises. One major paradigm is the so-called “Memphis Model” of crisis intervention. Officers receive training on responding to individuals in crisis, with specially-trained “CIT officers” being dispatched to calls implicating behavioral health issues.²⁰⁴ Steering committees of community stakeholders, including social service providers, clinicians, individuals of affected populations, and other community representatives, come together to discuss system-wide responses to mental health, substance abuse, and other behavioral issues.

At least on paper, the Department appears to be structured to implement the “Memphis Model.” Specifically, Directive 6.13 requires that, when possible, one or more members of the Crisis Response Team (“CRT”) should be assigned to handle calls involving a person in crisis as a result of a mental health issue. If the CRT is not available, Crisis Intervention Trained (“CIT”) members or any sworn member may respond. Meanwhile, APD Directive 8.36

²⁰¹ *Id.*

²⁰² Centers for Disease Control and Prevention, *Mental Health, Learn About Mental Health* <https://www.cdc.gov/mentalhealth/learn/index.htm> (last visited Apr. 21, 2021).

²⁰³ Martha W. Deane, “Emerging Partnerships Between Mental Health and Law Enforcement,” 50 *Psychiatric Services* 99 (1999).

²⁰⁴ See, e.g., Amy C. Watson & Anjali J. Fulambarker, “The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners,” 8 *Best Practices in Mental Health* 71 (2012); University of Memphis, *CIT Center*, <http://www.cit.memphis.edu/overview.php?page=2> (last visited Apr. 21, 2021).

provides that an officer may request the assistance of a member certified in CIT in situations where intervention offers a viable option and members certified in CIT should volunteer for calls for service involving individuals with mental health issues or disabilities and/or threats of suicide.

APD provided 21CP with data on the response of its Crisis Response Team. From January 2019 through August 2020, a 20-month period, there were over 3,300 CRT incidents. CRT was deployed in response to 0.9 percent of all calls for service during that period.

CRT response was associated with some 97 Call for Service (CFS) event types.²⁰⁵ Incidents involving individuals identified as suicidal were the most common cause for CRT incidents, accounting for more than one-quarter (28 percent) of all CRT responses. Welfare checks (16 percent) and follow-up visits (15 percent) were the next most-common incident types associated with CRT response. These top three event types accounted for over half of all CRT incidents, with the top five listed event types accounting for nearly three-quarters of all incidents.

Table 11. Event Types Associated with CRT Response, January 2019 – August 2020

Event Type	Count	% of Total
Suicidal	941	28.4%
Welfare	520	15.7%
Follow-Up	485	14.6%
Behavioral/Mental	319	9.6%
Assist	191	5.8%

Source: 21CP Analysis of APD Data

A CRT event occurred in response to over half of all calls for service involving a suicidal person or suicide attempt. Domestic incidents also frequently involved CRT, with 32 percent of domestic calls for service and 15 percent of family calls for service receiving a CRT response.

APD uses 65 unique disposition categories to describe what was found on the scene of a CRT deployment though a plurality (35 percent) had a mental health crisis disposition. The top five disposition types accounted for over 70 percent of all dispositions.

²⁰⁵ Some CRT event types were slightly edited in some circumstances during 21CP’s data analysis to match CFS event type categories. Not all CRT event types match a CFS event type.

Table 12. Disposition of CRT Responses, January 2019 – August 2020

Disposition	Count	% of Total
Mental Health Crisis	1,143	34.8%
Default	340	10.3%
Checked Welfare	295	9.0%
Contact Made	290	8.8%
Follow-Up/Report Write	279	8.5%

Source: 21CP Analysis of APD Data.

Over 55 percent of CRT events occurred between noon and 6 PM, with the most common time being between 2 and 3 PM (more than 11 percent). No CRT events occurred between midnight and 4 AM, while just 68 events occurred after 9 PM. 21CP wonders whether this lack of CRT response between 12AM and 4AM may have more to do with the availability of CRT response during that period than with individuals not experiencing behavioral crises during that time.

Indeed, as noted in this report’s previous discussion of calls for service data, although the period of 12AM to 4AM sees a lower number of calls for service, the volume of calls is not insignificant – some 127,016 calls during the time period over the years 2016 through 2020. It would appear to 21CP, then, that the relatively low number of CRT responses during the period is likely more due to personnel availability rather than the possibility that no crisis-eligible incidents occurred among the nearly 130,000 calls occurring between 12:00AM and 4:00AM from 2016 to 2020.

Table 13. CRT Responses by Time of Day, January 2019 – August 2020

Time of Day	Incidents	% of Total
12 to 6 AM	2	0.1%
6 AM to 12 PM	889	26.9%
12 to 6 PM	1,843	55.7%
6 PM to 12 AM	574	17.4%

Source: 21CP Analysis of APD Data

CRT events are relatively evenly spread out geographically among APD’s three districts.

Table 14. CRT Responses by APD District, January 2019 – August 2020

District	Events	% of Total
1	1,299	39.3%
2	972	29.4%
3	924	27.9%
PCW	113	3.4%

Source: 21CP Analysis of APD Data

Even as APD is dispatching its CRT in some instances, it does not appear that APD is fully, effectively, and meaningfully implementing its current CIT model/program and its various policies addressing crisis response as comprehensively as it could. Indeed, several APD personnel told 21CP that CIT officers are not required to respond to requests or calls. The decision to send a CIT officer to a call can be made by dispatch, but, as one stakeholder indicated, “there is no mandate to dispatch CIT.” To the extent that CIT is extra or optional, it does not appear that it is a central resource that APD officers use to address the response to particular individuals or incidents.

APD can either re-double its focus on fully implementing the current model or work with community stakeholders to establish an alternative response model, whether a co-responder model or social service response model. Some jurisdictions have successfully and comprehensively implemented the “Memphis Model,” with various studies linking the CIT program to positive changes in officer attitudes and knowledge, lower arrest rates, lower criminal justice costs, and better subject outcomes.²⁰⁶ Indeed, research suggests that officers who have received CIT training “do a good job at identifying patients in need of psychiatric care”²⁰⁷ – making the deployment of specially-trained officers in a structured, promising way to respond to individuals experiencing mental and behavioral health crises.

As communities across the country explore mechanisms for promoting community well-being and safety in ways that do not exclusively rely on police, other models are being discussed and implemented. These alternatives to the “Memphis Model” approach include:

- **Community Co-Response.** Officers and specially-trained clinicians or social workers respond to calls involving behavioral health issues. These non-sworn specialists and officers are specially dispatched as primary responders in situations that may involve individuals in crisis. “Thus, co-response teams go

²⁰⁶ Michael T. Compton, et al, “A Comprehensive Review of Extant Research on Crisis Intervention Team (CIT) Programs,” 36 *Journal of the American Academy of Psychiatry and the Law* 47, 52–53 (2008), <http://jaapl.org/content/36/1/47>.

²⁰⁷ Gordon Strauss, et al, “Psychiatric Disposition of Patients Brought in by Crisis Intervention Team Police Officers,” 41 *Community Mental Health Journal* 223, 223 (2005), <https://link.springer.com/article/10.1007/s10597-005-2658-5>.

beyond training police officers by integrating officers with trained professionals who specialize in behavioral health problems.”²⁰⁸ Programs launched in Colorado²⁰⁹ and Dallas²¹⁰ are examples.

- **Primary Community Response/“CAHOOTS” Model.** Social service providers or clinicians are dispatched in teams, without police, as the primary response to individuals in crisis where the call indicates that the individual is not posing a threat. Police are dispatched when these primary, community-based responders require such assistance. The City of Eugene, Oregon has for three decades dispatched “two-person teams consisting of a medic and a crisis worker who has substantial training and experience in the mental health field,” rather than immediately sending police, to “deal with a wide range of mental health-related crisis, including conflict resolution, welfare checks, suicide threats, and more . . . ,” which has been associated with positive outcomes and significant cost savings to the City.²¹¹

Even as a number of cities have enjoyed positive outcomes with the Memphis Model, many others are seeing encouraging outcomes with co-response and community response models that de-emphasize police presence or involvement.

21CP defers to APD, the City, and the Aurora community as to the response type or system that may be best suited for Aurora’s needs. To this end, we understand that the City is currently engaged in a number of initiatives related to crisis intervention. First, the City is launching a pilot of its own version of the CAHOOTS program (the “Right Response” program). The pilot will run for approximately six months, with the potential to expand across the City thereafter based on lessons learned and insights gleaned from that pilot process.

Second, the Chief of Police has indicated that she would like to increase the size of the CRT Team so that crisis-trained specialists can be more broadly available across the Department to take the lead on encounters involving individuals experiencing crisis. Indeed, the Chief expressed to 21CP that she would like for as many officers to receive CIT training as possible.

Third, APD is looking to incorporate clinicians within the dispatch function as a means of enhancing that function’s overall ability to make nuanced assessments about what types of

²⁰⁸ Katie Bailey, et al, “Barriers and Facilitators to Implementing an Urban Co-Responding Police-Mental Health Team,” 6 *Health and Justice* 21, 22 (2018).

²⁰⁹ Colorado Department of Human Services, *Co-Responder Programs*, <https://cdhs.colorado.gov/behavioral-health/co-responder> (last visited Mar. 6, 2021).

²¹⁰ Press Release, “Dallas Launches Coordinate Response Program for Behavioral Health Calls” (Jan. 22, 2018), https://mmhpi.org/wp-content/uploads/2018/04/01.22-RIGHTCareTeam_PressRelease_FMT_FINAL2.pdf.

²¹¹ White Bird Clinic, *What is Cahoots?* (Sept. 29, 2020), <https://whitebirdclinic.org/what-is-cahoots/>.

calls for service might benefit from crisis response resources. Finally, City stakeholders indicated to 21CP that the CRT program will be a priority for the City's internal audit function going forward.

In June 2021, APD further reported to 21CP that:

APD is committed to the Crisis Intervention Team (CIT) program and is in the process of implementing new training opportunities for officers who are not yet CIT trained. This effort was stalled due to the pandemic. We are already in the process of scheduling a CIT class in September or October of 2021 for all patrol officers, with a goal of certifying the entire agency. APD plans to expand the Crisis Response Team (CRT) program as staffing allows and incorporate this with the city's newly formed co-responder initiative.²¹²

Taken together, APD's various initiatives both explore response models rooted in non-police response and enhance the quality of the Department's current crisis response model. To the extent that the Aurora community determines that APD's current CIT/CRT model should be an ongoing part of the crisis response system in Aurora going forward, the Department would need to take a number of steps, including but not limited to embracing the following recommendations, to more completely and effectively realize the potential of the approach:

Recommendation 15.1. APD and the City should update its policies to ensure more streamlined, comprehensive treatment of crisis intervention issues and operational response details.

Many of the recommendations below contemplate changes to, or updates of, APD's policies regarding crisis intervention. Although APD's current Directive 6.13 provides some appropriate guidance to officers on "Dealing with Persons with Mental Health Disorders," APD should partner with social service providers, community stakeholders, clinicians, and mental and behavioral health advocates to expand existing policies to address the larger universe of behavioral health, substance abuse, and mental health challenges. That is, APD's policies should formally detail response expectations and protocols across a range of behavioral health conditions, not solely mental health disorders. These policies should more precisely inventory a host of considerations outlined below for the nature and type of

²¹² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 6.

appropriate responses.²¹³ APD has indicated that it “agrees with this recommendation and will implement a policy review for changes as necessary.”²¹⁴

Recommendation 15.2. The Aurora Police Department should establish a practice of dispatching CRT and CIT officers on calls they on calls that utilize their specialized training..

Crisis-trained officers tend to have:

Increased knowledge of mental illness (which manifests as an improved ability to recognize and respond, reduced stereotyping/stigmatization, greater empathy toward consumers and their caregivers, more patience when dealing with consumers, and fewer arrests/more redirection toward treatment), as well as practical application of learned skills (evidenced by an ability to put individuals with mental illnesses at ease, reduced unpredictability of the crisis situation, and reduced risk of injury).²¹⁵

For departments and communities to realize these potential benefits, the CIT approach must be “more than just training”²¹⁶ – with a department working to establish mechanisms to identify instances where specialist officers can be useful and ensuring that such officers are available and dispatched as appropriate:

CIT is an organizational and community intervention that involves changes in police department procedures as well as collaboration with mental health providers and other community stakeholders . . . Call dispatchers are trained to identify mental health disturbance calls and assign these calls to CIT trained officers.²¹⁷

²¹³ See, e.g., Seattle Police Department, Manual, Section 16.110, Crisis Intervention, <https://www.seattle.gov/police-manual/title-16---patrol-operations/16110---crisis-intervention> (Oct. 1, 2020); New Orleans Police Department, Operations Manual, Chapter 41.25, Crisis Intervention, <https://www.nola.gov/getattachment/NOPD/Policies/Chapter-41-25-Crisis-Intervention-EFFECTIVE-5-10-2020.pdf/?lang=en-US> (May 10, 2020); Baltimore Police Department, Policy 712, Crisis Intervention Program, <https://www.baltimorepolice.org/712-draft-crisis-intervention-program> (July 3, 2019); Cleveland Division of Police, General Police Order 5.11.02, Crisis Intervention Team Program, https://www.city.cleveland.oh.us/sites/default/files/forms_publications/1.10.2018CrisisInterventionTeamProgram.PDF?id=12402 (Jan. 1, 2018).

²¹⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 7.

²¹⁵ Sonya Hanafi, et al, “Incorporating Crisis Intervention Team (CIT) Knowledge and Skills into the Daily Work of Police Officers: A Focus Group Study,” 44 *Community Mental Health Journal* 427, 427 (2008).

²¹⁶ Amy C. Watson & Anjali J. Fulambarker, “The Crisis Intervention Team Model of Police Response to Mental Health Crises: A Primer for Mental Health Practitioners,” 8 *Best Practices in Mental Health* 71 (2012), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3769782/>.

²¹⁷ *Id.*

APD told 21CP that it has “been using a Crisis Response Team (CRT) staffed with Crisis Intervention Team (CIT) trained officers on calls they are trained to handle when they are available to respond since 2018,” with “[o]fficers assigned to the CRT . . . easily identified on the Dispatch screen as available “David Units,” and CIT officers are included on the daily staffing rosters available at briefings for all officers on duty.”²¹⁸

21CP’s recommendation here is for APD to meaningfully ensure the availability and deployment of CRT and CIT officers across all shifts and geographic units. Likewise, all APD officers, whether CRT, CIT-trained, or otherwise, should receive training on recognizing potential mental and behavioral health issues and affirmatively requesting the dispatch of specially-trained CIT officers.

Recommendation 15.3. APD should provide training to dispatchers so they may be better able to identify calls for service that may require or benefit from a CRT or CIT officer response.

Consistent with the previous recommendation, APD should provide dispatchers with additional and ongoing training on recognizing calls for service that might require or could benefit from a crisis-trained officer. APD informs 21CP that it “will work in coordination with the Public Safety Communications Division (PSCD) through their Dispatch Committee to review current guidelines and revise as necessary.”²¹⁹ Additionally, “[t]he city’s non-police response to crisis calls is in the development phase for training and will include the 21CP recommended training for dispatchers.”²²⁰

Recommendation 15.4. APD should establish and use a tracking system which identifies calls for services requiring the CRT Team/CIT officer, the response of crisis resources, and the outcomes of the call.

Based on discussions with APD personnel and command staff, and review of APD’s various policies and procedures, it does not appear that APD systematically and uniformly tracks instances where the CRT Team and/or CIT officers are requested, where such officers respond, and the resolution of calls where the CRT Team or CIT officers are involved. To better gauge the effectiveness of CIT calls and interactions with individuals in crisis, APD should collect in-depth data on crisis calls and analyze said data for performance patterns and trends. The Department notes that it “is in the process of hiring a program analyst for CRT who may be able to do this task” and provided 21CP with a job description for the position.²²¹

²¹⁸ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 7.

²¹⁹ *Id.*

²²⁰ *Id.*

²²¹ *Id.*

Recommendation 15.5. APD should conduct a review of the number of current CIT officers, their current assignments, and the recency of their training. Based on this information, APD should determine:

- How to best ensure geographic and temporal distribution of CIT assigned to patrol; and
- A specific training plan for ensuring that CIT officers have sufficient support and training both in the short-term and throughout their careers.

For the “Memphis Model” of crisis response to function effectively, crisis-trained officers need to be available to respond to incidents that may implicate behavioral or mental health crises. APD should conduct an in-depth review to ensure that it retains a sufficient number of APD officers to have available throughout the City and at all times. APD should likewise ensure that CIT-trained officers are assigned broadly, across the City and various shifts.

Additionally, CIT officers tend to benefit from routine refresher training on basic crisis intervention skills and from ongoing skills development that includes additional information about particular mental health challenges, new research, in-depth information about response techniques or community diversion resources, and other topics. Going forward, APD should formalize a program for ongoing, substantive training for CIT officers.

In response to this recommendation, APD informed 21CP that “[t]he continued implementation of agency certification will ensure CIT trained officers are on duty during all shifts” and that “[t]raining material will continuously be incorporated in APD’s annual training to address routine refresher training.”²²²

Recommendation 15.6. APD should craft updated, more specific policy guidance on the Crisis Response Team. The directive should contain information about the composition, roles, and responsibilities of the Team, as well as procedures for requesting, dispatching, tracking, and reporting on the use and outcomes of CRT.

Current APD policy does not address any of a number of details surrounding the Crisis Response Team. Directive 8.36 addresses CIT-trained officers but does not reference the Crisis Response Team. Directive 6.13 references CRT twice, and positions them as the primary individuals who “should be assigned to handle calls involving a person in crisis as a result of a mental health issue,”²²³ but it provides no detailed information about the Team, its composition, its operations, how APD ensures that CRT members are available throughout the City and across time, and the detailed mechanics for what APD officers should do as they may await CRT response.

²²² *Id.* at 8.

²²³ APD Directive 6.13, Section 6.13.

21CP recommends that the Department establish a detailed directive addressing CRT that provides parameters for CRT's composition, working protocols, response, documentation of response, training requirements, and other response considerations. APD has responded by noting that "[s]ome of this is already covered in the CRT's SOP's [Standard Operating Procedures]" but that "those areas will be reviewed and updated to reflect current information and practices."²²⁴

²²⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 8.

AREA 2. COMMUNITY ENGAGEMENT & PARTICIPATION

The killing of George Floyd and the significant national conversations about race and policing that it precipitated have underscored that the relationship between police and community is complex and challenging. The differing experiences, histories, and values of communities lead many people to advance different views about how the police should or should not interact with the public and roles for the police department in promoting public safety within their communities.

Since the early 1990s, after the passage of the Violent Crime Control and Law Enforcement Act, the United States Department of Justice and other federal agencies have given over \$14 billion to jurisdictions across the country for community policing initiatives.²²⁵ The objective of many of these programs was, according to the Department of Justice’s Office of Community Oriented Policing Services (“COPS”), to “promote[] organizational strategies that support the systematic use of partnerships and problem-solving techniques to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.”²²⁶

However, the term “community policing” has “suffered from conceptual confusion in both research and practice.”²²⁷ First, different agencies have tended to group widely varying types of initiatives, approaches, and programs under the banner of “community policing.”²²⁸ Second, in many departments, “community policing” refers to isolated and disconnected community engagement programs – like providing popsicles to children on summer days or having officers participate in youth basketball games – rather than an overriding, operational approach to policing. Third, and relatedly, a number of purported community policing efforts devoid of proper execution and design ultimately have become “check the box” activities rather than meaningful methods of cultivating community collaboration and problem-solving. Finally, and as this section discusses further below, 21CP has regularly heard from community and law enforcement alike that “community policing” is, at this point, a dated term that lacks a true definition across the field – and can often be perceived as a framework for expanding police presence in historically marginalized communities.

Community Policing, Problem-Solving, and Engagement in Aurora

²²⁵ U.S. Department of Justice, Office of Community Oriented Policing Services, <https://cops.usdoj.gov/grants> (last visited May 10, 2021).

²²⁶ U.S. Department of Justice, Office of Community Oriented Policing Services, “Community Policing Defined” at 1 (2014), <http://www.cops.usdoj.gov/pdf/vets-to-cops/e030917193-CP-Defined.pdf>.

²²⁷ A. Gersamos Ginakis, et al, “Reinventing or Repackaging Public Services? The Case of Community-Oriented Policing,” 58 *Public Administration Review* 485 (1998).

²²⁸ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* (2019).

As noted at the outset of this report, 21CP met with a number of community stakeholders. A good deal of discussion focused on the relationship between police and community, APD’s engagement with the community, and the role of the police in Aurora.

Public Safety-Related Committees and Task Forces

Aurora has appeared to develop a wealth of public committees or task forces related to policing and public safety issues over the years.²²⁹ The various public safety task forces in the City of Aurora are seen by a number of stakeholders as useful environments for Aurora residents to provide feedback or surface concerns on targeted issues. However, both city leaders and members of the community indicated to 21CP that the various bodies have been less effective at building relationships between community and police or at identifying and implementing specific solutions to problems – largely because there are so many groups that work in silos, on different issues at different times, and that often have differing opinions on the same issues when the areas for consideration do align. This leaves the APD in the position of determining whose opinion to prioritize when setting policy. Later in the report, we will reflect on the homelessness issue in Aurora – a primary example of the diverse landscape of community opinions that the APD must navigate.

Additionally, it was the perception of many community members and several of those selected to serve in these committees or task forces that the same, few community representatives seem to have an outsized voice with other, valuable types of community voices simply not represented.

These dynamics within Aurora’s task forces and committees mean that, even as the city structurally is attempting to engage substantively with the community on issues relating to policing and public safety, many Aurora residents do not feel like those structures adequately reflect their views, allow their participation, or are effective in setting the vision for how public safety works in Aurora and the specific agenda for how APD helps to further that vision.

Police Area Representatives (“PAR”) Unit

APD’s Police Area Representatives (“PAR”) Unit was created to engage in deeper problem-solving throughout the communities of Aurora. The Unit’s efforts are meant to engage in active relationship-building and community-based problem-solving in a manner that can promote to improved quality of life, decreased crime/violence in Aurora, and a fluidity of resources across various City entities and stakeholders that allows for holistically sustainable problem-solving solutions for the Aurora community. The PAR Unit Procedural Handbook identifies problem-solving and community relationship building as a principle

²²⁹ City of Aurora, City Hall, *Boards and Commissions* https://www.auroragov.org/city_hall/boards_commissions (last visited May 19, 2021).

tenant of the Police Area Representatives (PAR) Unit.²³⁰ This essentially leaves the critical responsibility of building strong relationships with the community to a select few in the department. Their objective, on paper, is to coordinate resources – both public and private – to impact crime, solve problems, and improve quality of life. In many discussions with 21CP, when residents said that they could identify an officer that added value to their community, it was very likely that the officer was their PAR officer.

However, other residents in Aurora suggested that they have had disappointing experiences with PAR officers. Indeed, a majority of residents with whom 21CP spoke were unable to identify their PAR officer or describe the duties of a PAR officer, suggesting that the program is not as widely or meaningfully implemented as it might be. There appears to be a perception in some quarters that PAR officers do not endeavor to build the type of deeper relationships with community that can help address specific community issues and help solve community problems. As one resident related:

I sometimes see them at our neighborhood association meetings but they simply report out crime statistics. When I reach out about specific nuisance issues like illegal parking in my community or congregating during COVID, I get no answer or engagement.

As 21CP analyzed this gap in understanding around community engagement and problem-solving in the community, we learned more broadly that the PAR officers themselves see their role more as a tool for their fellow patrolman more than that of a resource for the community. As one former PAR officer said,

The PAR Unit is the junk drawer of the department. One day they could be serving a warrant on the S.W.O.T team, the next they may be helping to distribute free groceries to residents experiencing food insecurity.

PAR officers report being required to handle everything from parking violations and animal control issues to homelessness challenges while also serving as conduits to various city entities in order to allow their peers to be more readily available to move from call to call. This stems, it appears, from the fact that PAR officers take their direction from patrol officers – leaving the PAR officers as an auxiliary resource rather than a primary problem-solving mechanism.

21CP found that some confusion regarding the PAR officer's role is indeed reflected in APD's PAR Officer Handbook. For instance, the PAR Unit's intense focus on training that addresses crime prevention through environmental design and property management risks giving the impression that community policing begins with partnership with landlords and

²³⁰ Aurora Police Department, *Police Area Representative Handbook* 8 (2020).

management of nuisance properties and their tenants over community care. Specifically, about one-third of PAR officer training focuses on how to manage, cite, and address problematic properties.²³¹ In their interviews, PAR officers tended to focus on properties and locations that were problematic for homelessness, ill repair, and vagrancy issues – noting that they did the follow up in these spaces because patrol officers didn't have the time. Although, there is likely a need for a holistic response to such spaces through partnership with 3-1-1 and other City-wide entities, the focus of PAR officers on this band of issues may not be resulting in the types of stronger community relationships that the program appears intended to foster.

The PAR Unit Handbook also contains a detailed analysis of the tools, resources, and training for all officers in the Unit. The Handbook encourages officers to undergo four required trainings. Two of those trainings are offered by the department: a 40-hour annual bicycle training and a 40-hour Crisis Intervention Training. Two additional trainings offered outside the Department: a Crime-Free training, which addresses mitigating crimes by tenants and addressing property management issues, and a training on Crime Prevention Through Environmental Design. When interviewed, PAR officers told 21CP that the trainings offered outside the department were not regularly offered and most on-boarding into a PAR position was done by fellow PAR officers. The outside trainings required pre-approvals, which are historically hard to obtain due to low staffing and limited budgets. In any event, it is likely that PAR officers should receive much more comprehensive training on issues relating to community problem-solving, cross-cultural communication, and other issues that provide community stakeholders and residents with opportunity to provide community-specific instruction and resources to PAR officers.

Although APD should be commended for the creation of a PAR Unit, as many peer departments have not gone as far as to formally devote resources to community problem-solving initiatives, there remains room to grow, streamline, and redefine this Unit and the work of all APD officers to give a larger focus to community problem-solving.

Community Relations Section

Chief Wilson created APD's Community Relations Section in January 2021. This section is led by the City's former Community Relations Director, Claudine McDonald, and includes Recruiting, Community Relations Officers, Aurora for Youth Programs, Police Explorers, the Chief's Community Police Advisory Team, and the Chief's Youth Advisory Team. 21CP understands that the new section is tasked with leading community engagement and problem-solving. Although its charge appears somewhat similar to the PAR Unit, it appears that where the PAR Unit currently is a catch-all for patrol overload and follow up, the new

²³¹ *Id.* at 13.

Community Relations Section wants to engage the community where they are to build collaboration, problem-solving, and healing.

At present, the Community Relations Section is too new for 21CP to meaningfully review or evaluate. However, the amount of programming that the group has planned and the growth of its activities is encouraging. Although APD will need to be mindful of the current, on-paper overlap between the PAR and Community Relations functions, the existence of a broader, community-focused function with the Department beyond individual PAR officers provides a stronger foundation for ongoing relationship-building with the community, as certain recommendations below suggest.

Future Roles & Functions of Police in Aurora

Going forward, Aurora’s many communities must define what public safety is and what the role of policing should be in advancing such safety. As this section details, one approach that some communities are taking is to implement “community policing” not simply as an “extra” program or a task of some, specialized officers but, instead, as a fundamental, overriding philosophy that guides everything that officers do. In these communities, the focus of officers is just as much, if not more, on addressing community needs and solving community problems than on traditional law enforcement. Some community members appeared to desire this type of engagement with one community leader underscoring the gaps in prior “community policing” approaches:

I haven’t seen the police in the time I have lived in Aurora even try to build a relationship. If anything, I feel like they distance themselves.

At the same time, however, other jurisdictions are more comprehensively re-imagining public safety by exploring what mechanisms and resources may be available to respond to community needs such that their presence can be reduced when an armed law enforcement officer is not the best or appropriate response. As one resident summarized:

I think we need to get out of the concept of policing and look at public safety. Policing is ‘let me uphold the law and terrorize people to enforce it if need be.’ Public safety is pushing the philosophy of care for the community forward as a priority for leadership.

These two approaches – changing the nature of police response while standing up meaningful alternatives to police response for particular community issues – need not be mutually exclusive and can, in fact, be complementary. The following sections briefly describe the paths that the Aurora community, in partnership with APD and elected officials, might take in the future to better serve the community’s needs and provide for community well-being.

Community Policing as an Overriding Philosophy

To the extent that the Aurora community continues to find the “community policing” framework useful for addressing how police can help to foster community safety and well-being, APD must view “community policing” as a foundation of the entire department and an overriding philosophy for everything that it does. As the President’s Task Force on 21st Century Policing stated in its report to President Obama in 2016, real “community policing” is not just a standalone activity or a set of outreach initiatives but rather a core approach that “should be infused throughout the culture and organizational structure of law enforcement agencies.”²³²

[Community policing] should be the standard operating method of policing, not an occasional special project; (2) it should be practiced by personnel throughout the ranks . . . ; (3) it should be empirical, in the sense that decisions are made on the basis of information that is gathered systematically; (4) it should involve, whenever possible, collaboration between police and other agencies and institutions; and (5) it should incorporate, wherever possible, community input and participation, so that it is the community’s problems that are addressed (not just the police department’s) and so that the community shares in the responsibility for its own protection.²³³

Jurisdictions elsewhere have implemented approaches geared toward establishing a more comprehensive community policing philosophy. For example, the Seattle Police Department partnered with Seattle University to design a survey and comprehensive community policing strategy that was tailored to each of Seattle’s neighborhoods.

The Micro Community Policing Plans (MCP) were designed to address the distinctive needs of each community. The plans take a three-prong approach that brings community engagement, crime data and police services together to get direct feedback on perceptions of crime and public safety. MCP are tailored to meet the individual needs of each community, with a unique approach owned by the community The MCP neighborhoods were defined through police-citizen engagement including community meetings, focus groups, survey data, and the realities of geographic boundaries SPD can use to collect and report on events. The MCPs and their neighborhoods will be routinely reevaluated with attention to the ways in which citizens who live in Seattle neighborhoods define their communities.²³⁴

²³² *Final Report of the President’s Task Force on 21st Century Policing* (2015).

²³³ Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1 (1995).

²³⁴ Seattle Police Department, *About MCP*, <https://www.seattle.gov/police/about-mcp> (last visited May 10, 2021).

Similarly, in Dover, New Jersey, the Dover Police Department worked in conjunction with their community to create a mission statement and subsequent plan that “promote[s] a partnership between the community, businesses, government, the media, and law enforcement designed to reduce crime and improve the overall quality of life while encouraging the community to determine its own needs through the exchange of ideas and problem-solving techniques.”²³⁵

In Aurora, materials indicate that the development of community policing strategy is left to “all Districts, Bureaus, and Sections of the Department” and encourages members to use a Community Policing Problem-Solving workbook to individually come up with plans which risks that some plans may be more comprehensive for one community and less for another. Although likely designed so that command of each district could target individual needs of their unique communities, much like those done in Seattle, 21CP found indications that this simply was not the case. Rather, as mentioned previously, PAR Units seem to be considered the community policing conduit across *all* districts and multiple cross-departmental functions. Consequently, there appears to be relatively little District-specific design of community policing efforts of the sort suggested by the Department’s materials.

The implementation of a comprehensive community policing philosophy requires three basic elements: partnerships, problem solving and organizational transformation. With respect to partnerships, departments and communities must work together to define the overall mission of the police department and its purpose in public safety across the municipality. This partnership should be ongoing and engage a diverse group of stakeholders who are active in their community. The scope of this engagement should go far beyond the participation of a small cadre of community leaders who purport to speak for communities to also include a true investment toward hearing from all voices.²³⁶

Organizational transformation is the foundation for instilling community policing throughout the culture and organization of a police department. Community policing is something that must be practiced by all officers across all ranks and assignments, not something done by an isolated or small unit.

However, patrol is the primary organizational unit charged with achieving community policing. Typically, this means that patrol officers should be assigned to specific geographic locations for extended periods.²³⁷ There must be sufficient number of officers assigned to Patrol and they must also be given the time to work with the community in their assigned

²³⁵ Dover Police Department, *Community Policing*, <http://www.doverpolicenj.org/newpage3.htm> (last visited May 10, 2021).

²³⁶ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* (2019).

²³⁷ Yucel Ors and Nicole DuPuis, National League of Cities, *City Officials Guide to Policing in the 21st Century* (2016), <https://www.nlc.org/wp-content/uploads/2016/12/NLC-Community-Policing-Guide-updated-71516.pdf>.

areas and to problem-solve. Furthermore, cities including Chicago,²³⁸ Cleveland,²³⁹ and New York²⁴⁰ have worked to implement community policing models that focus on providing officers with time “off the radio” when they can engage in meaningful relationship-building and work to proactively solve community problems. The International City/County Management Association recommends that sixty percent of a department’s sworn members at the rank of officer be assigned to patrol and that no more than 60 percent of available patrol officer time be spent on answering calls-for-service.²⁴¹ Not needing to respond to emergency calls during such time, officers instead have sustained opportunities to engage with residents on issues relating to community well-being. Individual officer efforts to address community problems are logged and tracked. In this way, “community policing” becomes a core, day-to-day responsibility of all officers – and helps to permeate all aspects of what they do.

This organizational approach to community policing can present a number of implementation challenges, including officer resistance, securing interagency support, creating necessary community partnerships, and building community involvement.²⁴² In police departments that give officers specific time to conduct community engagement and problem-solving, organizational and workload analyses were conducted and formed the basis for shifting officer assignments and expanding available discretionary time. New codes in Computer Aided Dispatch systems were created to track how officers used this discretionary time as well as computerized forms to capture community policing activities and outcomes. In the case of Baltimore,²⁴³ the entire police department is being trained on their roles and responsibilities under community policing.

²³⁸ NYU School of Law Policing Project, Neighborhood Policing Initiative, <https://www.chicagonpi.org/npi> (last visited Jan. 15, 2020) (describing program to “provide all officers uncommitted time in which to engage in relationship-building and problem-solving within the neighborhoods they serve”).

²³⁹ Cleveland Division of Police, Community and Problem-Oriented Policing Plan 6 (2019) <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5c796361e2c48323a6b4064b/1551459170892/CPOP+Ex+A.pdf> (providing patrol officers with 20 percent of their time to devote purely to community engagement opportunities).

²⁴⁰ New York Police Department, Neighborhood Policing, <https://www1.nyc.gov/site/nypd/bureaus/patrol/neighborhood-coordination-officers.page> (last visited Jan. 15, 2020) (describing “off-radio time” provided to officers “so they are not exclusively assigned to answering calls for service” and “used to engage with neighborhood residents, identify local problems, and work toward solutions”).

²⁴¹ James McCabe, *An Analysis of Police Department Staffing: How Many Officers Do You Really Need?*, https://icma.org/sites/default/files/305747_Analysis%20of%20Police%20Department%20Staffing%20%20McCabe.pdf (last accessed May 25, 2021).

²⁴² Susan Sadd and Randolph M. Grinc, “Implementation Challenges in Community Policing,” *National Institute of Justice Research Brief* (Feb. 1996), <https://www.ojp.gov/pdffiles/imlcp.pdf>.

²⁴³ Baltimore Police Department, *Community Policing Plan*, <https://www.baltimorepolice.org/bpd-community-policing-plan> (last accessed May 25, 2021).

Some studies have found community policing programs to be associated with enhanced resident satisfaction and police legitimacy.²⁴⁴ A 2019 random-control study found that positive contact with the police in a nonenforcement activity substantially improved residents' attitudes toward police, including a greater willingness to cooperate and greater sense of police legitimacy, particularly among non-white populations²⁴⁵:

The results reported here provide clear empirical support for the efficacy of policing strategies aimed at improving attitudes toward the police via positive nonenforcement contact between officers and the communities they serve.²⁴⁶

Effects of community policing on public safety are mixed. The 2019 study found that community policing has only “a small impact on violent crime, a nonsignificant impact on property crime, and a small effect on fear of crime.”²⁴⁷ However, a study of community policing in Chicago in the 2000s found that violent crime dropped 56 percent, property crime dropped 37 percent, and public confidence in police increased during the implementation of a community policing approach.²⁴⁸ A program in Philadelphia prioritizing foot patrols found that, relative to areas without foot patrols, violent crime decreased by 23 percent.²⁴⁹

Ultimately, the Aurora community and stakeholders might determine that “community policing” is the best approach for policing in Aurora going forward. However, APD’s current “community policing” initiatives functionally delegate the work of community partnership and problem-solving to particular personnel – whether the PAR Unit, the Community Relations Section, or even the City various task forces and committees that address public safety issues. If the Aurora community wants APD to engage more closely and meaningfully with the Aurora community, the philosophy of community problem-solving and sustained relationship-building will need to be woven into the day-to-day, minute-to-minute fabric of what the Department, and all of its personnel, do across functions.

Re-Imagining the Role of Policing

One recurring issue with “community policing” is that it does little to address the concerns of those in the community – and especially those of Black, Latino and Hispanic, and other communities of color – for whom the very presence of police in their neighborhoods is a source

²⁴⁴ Center for Evidence-Based Crime Policy, *What Works in Policing*, <https://cebcp.org/evidence-based-policing/what-works-in-policing/research-evidence-review/community-policing/> (last visited May 25, 2021).

²⁴⁵ Kyle Peyton, Michael Sierra-Arevalo and David G. Rand, “A Field Experiment on Community Policing and Police Legitimacy, 116 *PNAS* 19894 (2019), <https://www.pnas.org/content/116/40/19894>.

²⁴⁶ *Id.*

²⁴⁷ *Id.*

²⁴⁸ Wesley Skogan, *Police and Community in Chicago: A Tale of Three Cities* (2006).

²⁴⁹ Jerry Ratcliffe, et al, “The Philadelphia Foot Patrol Experiment: A Randomized Controlled Trial of Police Patrol Effectiveness in Violent Crime Hotspots,” 49 *Criminology* 795 (2011).

of fear and distrust. That is, rather than reducing the imprint and role of police in communities that have been disproportionately impacted by police, “community policing” calls for expanded and sustained interaction between police and communities.

To this end, and with respect to the role of police – what police do and how they do it – many say that our society over-relies on police to address social issues that have little to do with the enforcement of laws. Police officers themselves have increasingly maintained that “[w]e’re asking cops to do too much in this country.”²⁵⁰ Although research in the field is somewhat lacking across all 18,000 departments in the country, a *New York Times* article analyzing major cities such as, Sacramento, New Orleans, and Montgomery County, MD suggested that “officer[s] spend roughly 4% of their time addressing violent crime.”²⁵¹ Indeed, APD’s calls for service data, summarized elsewhere in this report, show APD officers spend the vast majority of their time addressing community problems and issues that are not related to violent crime. With law enforcement officers devoting a comparatively small proportion of their time enforcing the serious violations of law, the vast majority of their time is spent addressing a variety of “social problems – substance abuse, mental illness, homelessness, domestic disputes, even civil unrest”²⁵² that have little to do with violent crime or law enforcement.

Consequently, many jurisdictions across the country are engaging in process aimed at re-imagining public safety”: systematically considering what its community needs to do to provide for the well-being and safety of its community, who the right people or resources are to meet those needs, and how the jurisdiction can establish systems or ensure structures that allow for all of its diverse communities to thrive.

A meaningful process of re-imagining public safety does not reflexively assume that police are the best or most appropriate response simply because they have historically been the only ones who are available and accessible. Instead, a practical process of re-imagining public safety systematically considers (1) what functions the police currently perform, (2) whether the police are positioned and supported to perform those functions, and, if not, (3) what other services either exist or need to be built to perform them instead. It inventories the community’s problems, issues, and needs and will consider whether a police response is the best, most appropriate response in each instance – and whether some alternative resource may be better equipped to address the situation and provide for community well-being.

²⁵⁰ Clarence Page, “Are We Asking Too Much of Police?,” *Chicago Tribune* (Sep. 4, 2020), <https://www.chicagotribune.com/columns/clarence-page/ct-column-daniel-prude-police-david-brown-page-20200904-bmps6mdxzrcmlbipai6s6achau-story.html> (quoting Chicago Police Department Superintendent David Brown).

²⁵¹ Jeff Asher and Ben Horwitz, “How Do the Police Actually Spend Their Time,” *New York Times* (June 19, 2020), <https://www.nytimes.com/2020/06/19/upshot/unrest-police-time-violent-crime.html>.

²⁵² Barry Friedman, “Disaggregating the Policing Function,” NYU School of Law, Public Law Research Paper No. 20- 3 26 (Apr. 6, 2020).

In Aurora, a number of stakeholders raised community issues and problems that may not require an armed police response and are, therefore, immediately ripe for alternative response systems not related to APD, including but not limited to:

- **Crisis Intervention.** As this report details elsewhere, Aurora could establish a model of behavioral crisis response that establishes non-police social service providers as the primary response to individuals in crisis.
- **Traffic Accidents.** Law enforcement officers may not be necessary at the scene of many types of traffic accidents, allowing for alternative mechanisms of recording accident reports or conducting traffic management tasks.
- **Response to Residential and Commercial Alarms.** Aurora could examine mechanisms for minimizing the reliance on police to respond to certain types of alarms.
- **Property Considerations.** Although some types of theft or property issues might require the filing of a police report, an immediate response by an armed police officer may not be necessary. Aurora might consider an online reporting system, or designating individuals who community members can contact, and who are dispatched, when issues arise regarding personal property on campus.
- **Welfare Checks.** It is not always obvious that APD is best equipped, specialized, or trained to respond to and conduct welfare checks on people when there is no reason to believe that those individuals are armed or dangerous.

In discussions with APD command staff and City leadership, 21CP learned about some early initiatives aimed at identifying community needs that may be best situated for a response that does not involve sworn APD personnel. First, as discussed elsewhere in this report, Aurora is piloting a version of the CAHOOTS program aimed at sending trained, non-police professionals to the scene of incidents involving individuals in mental or behavioral health crisis. City officials noted that this initiative is being called the “Right Response” program because there is an increasing awareness that the appropriate and best response to instances where individuals are concerned about someone’s well-being often does not involve the police.

Second, the Chief is working to establish a civilian traffic unit. Within this model, non-sworn, civilian Community Service Officers (“CSOs”) would receive training and conduct investigations on traffic stops, address calls involving non-injury accidents, and manage the scene of traffic issues (such as waiting for cars to be towed, waiting for scenes to be cleared, and the like). These CSOs might also address motor vehicle theft in instances where there is no specific suspect information. Although this will require substantial coordination with Dispatch and the creation of clear protocols with respect to what CSOs address and what

APD officers address, the Chief observes that this is a potentially promising way to better calibrate the City’s response to community needs.

Recommendation 16. Aurora should ensure that the Community Policing Task Force, or the like, serves as a permanent, standing body going forward that leads the City in creating a new, shared vision of public safety in Aurora. Among other primary tasks, it should be responsible for helping to facilitate, with input from Aurora’s diverse stakeholders and communities:

- A definition of public safety in Aurora that defines the roles and responsibilities of the Police Department and the roles and responsibilities of other government and City stakeholders with respect to community safety and well-being;
- The creation and maintenance of a Community Safety Plan geared toward translating Aurora’s vision of public safety into operational milestones, deliverables, and deadlines;
- Convene regular listening sessions that incorporate relevant subject-matter expert testimony, as appropriate, to assist in the collaborative planning necessary to establish a Community Safety Plan; and
- Coordinate across Aurora’s many government and institutional stakeholders on issues relating to public safety.

In the last two years, the Mayor and Aurora City Council have taken the steps to more intentionally hear from community; to “further explore their concerns, provide a voice to the community, and educate those concerned on the community’s perspective, several rounds of community forums were conducted.”²⁵³ Following these forums, Mayor Pro Tem Johnson, “sponsored a resolution to improve APD communication and develop recommendations for a civilian-involved oversight system on police procedures and processes. The successful Resolution led to the Aurora City Council appointing the [Community Policing] Task Force in June 2020 to develop recommendations.”²⁵⁴ The group met monthly to hear from the community in numerous forums and then to work amongst themselves to develop recommendations, “to improve the community and police relationship and keep citizens of Aurora (especially Black, Brown, and Poor people) safe.”²⁵⁵

The group – made up of community stakeholders including educators, advocacy groups, and healthcare workers, Aurora Police, and City Council members – worked to evaluate, discuss, and develop, “recommendations to improve effective and transparent communication

²⁵³ Ryan Ross, Community Police Task Force, *City of Aurora Community Police Task Force Recommendations* (Mar. 20, 2021) at 71–81, <https://auroragov.org/common/pages/DisplayFile.aspx?itemId=17557323>.

²⁵⁴ *Id.*

²⁵⁵ *Id.*

between APD and the community, including recommendations for a citizen-involved/citizen-based review of critical incidents, police operations, and police practices and procedures.”²⁵⁶

In their final report, the group addressed that their recommendations were designed to be, “the very beginning or foundation of important work that must follow and is not a catch-all solution.”²⁵⁷ 21CP Solutions agrees, and observes a body such as this provides important insight into community and stakeholder needs that can remain a critical, ongoing tool.

More specifically, for Aurora’s residents to come together to define public safety and the role that APD should play in community well-being, the effort will need to be credibly facilitated by a major stakeholder. To this end, a city-wide stakeholder group, such as a Community Relations Board (CRB) or Community Advisory Board (CAB), would be a valued addition and likely well-situated to provide a process for diverse City stakeholders and residents to come together and explore how policing should work in Aurora in the future. Among other things, CRB- or CAB-type group could consider what safety is for Aurora and what APD’s role should and should not be to properly align with that conception of safety. APD also notes that it “currently uses the Community Policing Advisory Team (CPAT),” with “[t]he Chief’s office regularly communicat[ing] with this team and seek[ing] recommendations and guidance with regard to public safety and APD functions.”²⁵⁸ “Also, the Chief’s Youth Advisory Team (CYAT) was recently formed and provides a similar function from a different perspective.”²⁵⁹

The concept of community members partnering with police to engage in structured, candid discussions about public safety and the role of policing is not novel, even if it is used far less frequently than is likely optimal. For instance, the San Francisco Police Department developed a Community Policing Plan as part of a collaborative reform initiative undertaken with the Department of Justice’s Community Oriented Policing Services Office.²⁶⁰ Writing in *Police Chief* about the development of such a plan for the City of San Francisco, the Chief of Police and Commander of the Department’s Community Engagement Division cited four lessons learned, all of which point to the fundamental importance of community collaboration in the development of a community policing approach:

- Development of the plan must be a true partnership. Community policing necessitates that the community itself have a voice and so should officers of all ranks

²⁵⁶ *Id.*

²⁵⁷ *Id.*

²⁵⁸ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 8–9.

²⁵⁹ *Id.* at 9.

²⁶⁰ See generally U.S. Department of Justice, Office of Community Oriented Policing Services, Collaborative Reform Initiative, *An Assessment of the San Francisco Police Department* (2016).

- Beginning the process by outlining desired outcomes from community policing will serve as a guide for the work. It is very difficult to define a process if the end goal is not articulated
- Diverse viewpoints (by demographics, geography, politics, background, opinion of the police, and more) are critical for creating a plan that can be accepted as legitimate by the community.
- Transparency and an open, accessible process are just as important as the resulting plan in earning the community’s trust; the act alone of creating a community policing plan is not enough. The community members involved in creating the plan should provide input about how to make the process as inviting and available as possible.²⁶¹

Similarly, the Cleveland Division of Police, as part of reform under a federal Consent Decree in the wake of controversial use of force incidents, including the shooting of 12-year-old Tamir Rice, developed a community and problem-oriented policing plan in 2019.²⁶² That Plan was the culmination of a major initiative that included City-wide roundtables, meetings in various police districts, and discussions and outreach with substantial numbers of community organizations comprised of or representing Cleveland’s diverse communities.²⁶³

As these, and similar efforts and plans in cities like Washington, D.C. and Philadelphia illustrate, a community safety plan can translate community concerns, needs, objectives, and values into actionable realities.²⁶⁴ The plan, and the process of establishing the plan, provides a level of transparency to the community that can build trust.²⁶⁵

Recommendation 17. To the extent that the Police Area Representatives (“PAR”) Unit and Community Relations Section remain core elements of its community engagement strategy, APD should endeavor to enhance the quality and impact of the Units.

²⁶¹ William Scott and David Lazar, “Community Policing Strategic Plans,” *Police Chief* (Oct. 3, 2018).

²⁶² Cleveland Division of Police, *Community and Problem-Oriented Policing Plan* (2019), <https://static1.squarespace.com/static/58a33e881b631bc60d4f8b31/t/5c6c64fc15fcc006885690b1/1550607613358/CDP+Community+and+Problem-Oriented+Policing+Plan.pdf>.

²⁶³ See Cleveland Police Monitoring Team, *Sixth Semiannual Report* 14–19 (March 2019), <https://static1.squarespace.com/static/5651f9b5e4b08f0af890bd13/t/5c7fe982104c7baa2a3479d4/1551886726000/Sixth+Semiannual+Report--FINAL.pdf> (describing development of Community and Problem-Oriented Policing Plan); “Clevelanders Discuss Ideas for Community Policing Policy,” WOSU.com (Mar. 22, 2017), <https://radio.wosu.org/post/clevelanders-discuss-ideas-community-policing-policy> (addressing process of public input for community policing plan).

²⁶⁴ Jack Ferraro, *Project Management for Non-Project Managers* 172 (2012).

²⁶⁵ See, e.g., Joshua Chanin and Salvador Espinosa, “Examining the Determinants of Police Department Transparency: The View of Police Executives,” 27 *Criminal Justice Policy Review* 498, 499 (2015).

This report elsewhere describes some of the limits of the existing PAR Unit. Pursuant to the prior recommendation, it may determine that PAR officers are unnecessary or counter-productive going forward. It may also be that a revised and clear set of responsibilities can be crafted that can better integrate PAR officers into the APD's broader roles and objectives for APD that a Community Safety Plan may articulate. 21CP can see APD being successful either with a renewed, reinvigorated PAR contingent or by abandoning the Unit in favor of new, alternative approaches.

However, to the extent that this Unit, as well as the Community Relations Unit, remain significant elements of APD's strategies going forward, we make some specific recommendations about how these structures might better help to support APD's broader mission and community problem-solving objectives. To this end, APD observes that "[o]ur PAR Unit includes officers who have gained certification in the Crime Prevention Through Environment Design (CPTED) program, a nationally recognized specialized training which includes community problem solving and crime reduction practices" and that "PAR and Community Relations Officers will continue to actively engage in all of these recommendations."²⁶⁶

Recommendation 17.1. APD should ensure alignment between current PAR officer roles, the values and mission of the PAR Unit as set forth in APD policy, and the expectations and needs of the Aurora community.

As previously observed, it appears that PAR officers view their primary role as relieving their peers from the day-to-day problem-solving of community engagement and policing so that they may be more responsive to calls for service. They did not express or appear to believe that taking the time to develop meaningful community relationships was their first priority.

To the extent that APD intends to use the PAR Unit as an extension of community problem-solving, it must then be sure that the standards of operating procedure align with the mission of the APD, the Unit, and the community, especially as articulated in a Community Safety Plan.

Recommendation 17.2. APD should consider mechanisms for PAR officers to engage in alternatives to motorized patrol.

PAR officers told 21CP that the availability of bicycles and bicycle maintenance are inconsistent within APD. Although there have been times when the bicycle fleet was well-stocked, maintenance was always a challenge. As bikes fell into ill-repair, they were not replaced and the fleet got smaller.

²⁶⁶ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 9.

Many PAR officers agreed that bicycles would be a critical tool to make their job easier and give them more direct access to the community. They stressed that increased care and management of this resources would be deeply valuable in the daily execution of their role.

Many studies suggest that the effective implementation of alternatives to motorized patrol, including foot and bike patrols, are one common and successful step that can support an overriding “community policing” approach.²⁶⁷ These non-vehicle-based patrol strategies can serve as expanded opportunities for APD officers to say hello to those they pass, stop for one-on-one conversation, and establish clearer routines within the community through a casual observation and interaction with day-to-day life in Aurora.

Separately, foot patrols may also be an alternative to motorized patrol that could assist PAR officers in being more effective with community problem-solving. A 2016 Police Foundation study evaluating foot patrol programs nationwide found that, among other benefits, foot patrols “facilitate relationship-building between officers and the community,” “[e]nhance the enforcement and problem-solving capability of law enforcement,” “can change how the community views police officers,” and can “increase the legitimacy of the police in the eyes of the community.”²⁶⁸ Although some argue that foot patrols are overly resource-intensive because they limit the ability of an officer to move quickly to respond to calls, the use of foot patrols by PAR officers, who should be focusing primarily on community problem-solving engagement rather than call response, could likely be accommodated in future staffing approaches.

Of course, some within the Aurora community may not desire the sense of added presence that foot patrols or bicycle patrols might create. Consequently, the benefits and disadvantages of alternatives to motorized patrol will need to be weighed through careful community deliberation.

In response to 21CP’s recommendations, APD noted the following:

For decades, APD PAR Officers have been trained and equipped with bicycles to use for patrol, crime suppression and community policing. While Districts 2 and 3 in the past have been equipped with bicycles for their PAR Units, due to the geographical nature of these districts and the massive growth, bike patrol has not been as present in those Districts. District 1, being the highest in population density, and more urban

²⁶⁷ Gary W. Cordner, “Community Policing: Elements and Effects,” 5 *Police Forum* 1, 4 (1995); A. Gerasimos Gianakis, et al, “Reinventing or Repackaging Public Services? The Case of Community-Oriented Policing,” 58 *Public Administration Review* 485 (1998).

²⁶⁸ Brett M Cowell & Anne L. Kringen, Police Foundation, *Engaging Communities One Step at a Time: Policing’s Tradition of Foot Patrol as an Innovative Community Engagement Strategy* iv (2016), https://www.policefoundation.org/wp-content/uploads/2016/09/PF_Engaging-Communities-One-Step-at-a-Time_Final.pdf.

and compact (vs. spread out neighborhoods), bike patrol can be easily utilized and is much more effective.

In 2019, with the formation of the Neighborhood Policing Unit (NPU), all the bike patrol functions transitioned to that new unit. This resulted in all of the District PAR bicycles being collected and managed by the NPU. In 2020, with the civil unrest in Aurora, an Emergency Response Team (ERT) bike unit was formed to be used in protests and other events. Training was provided . . . and in 2020, the only bicycles that were being used for policing were by the NPU and ERT for protests.

In April of 2021, we re-allocated some of the bicycles back to the District PAR Units and PAR Officers are again utilizing police bicycles in their duties

Additionally, several times per month, the PAR units are conducting foot patrol operations in the Business Districts.²⁶⁹

Recommendation 17.3. APD should provide PAR officers with annual trainings on key community problem-solving topics to ensure that all Unit officers develop in-depth skills relating to:

- **Best practices in community-centered and problem-solving policing approaches including but not limited to procedural justice, bias-free policing, least-intrusive response approaches, and strategic and cross-cultural communication skills.**

The APD training materials that 21CP reviewed miss a significant chance to train PAR officers on the community engagement strategy of the Department as a whole. Materials indicate that the development of the strategy is left to “all Districts, Bureaus, and Sections of the Department” and encourages members to use a Community Policing Problem-Solving workbook to individually come up with plans, which risks that some community's plan may be more comprehensive than a neighboring community.

Even as the Department’s PAR Handbook contains useful information, and even as APD notes that PAR officers receive “on-going in-depth training” on the PAR Manual and problem-oriented policing,²⁷⁰ all PAR officers should receive comprehensive and ongoing training on new community policing expectations. This training should address, among other things:

- Problem-oriented policing tactics;
- Conflict resolution, including verbal de-escalation of conflict;

²⁶⁹ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 9.

²⁷⁰ *Id.* at 10.

- Cultural awareness training that addresses the history and culture of Aurora’s diverse communities;
- Public safety and crime prevention strategies through community engagement, neighborhood partnerships, and addressing quality-of-life issues; and
- Methods of ongoing, person-to-person community engagement.

Recommendation 17.4. APD should provide formalized, regular mechanisms for PAR officers and the Community Relations Section to share their expertise, experience, and community relationships with the broader Department, including in the contexts of roll call and in-service trainings.

To the extent that PAR officers have interactions and build relationships with community members that are distinct in kind, scope, and volume from other officers, they should have formalized opportunities to share their experiences and specific knowledge with the broader Department. This includes informal, ongoing debriefings at roll calls and more formalized presentations in the context of in-service training. Ultimately, knowledge about community problems, the creation of potential solutions, and the fostering of relationships is not as beneficial to the Department if only a small cadre of specialized officers is aware of what PAR officers are accomplishing.

APD indicated to 21CP that “PAR Officers regularly attend patrol briefings to pass on information, projects and current events” and that, “[a]t the same time, patrol can then relay current issues back to PAR Officers that they can help address.”²⁷¹ “Additionally, the Community Relations Section will be presenting at Divisional Training.”²⁷² Although 21CP did not hear much about this in interviews with APD personnel and stakeholders, the regular feedback between PAR Officers and patrol is a welcome and important commitment.

Recommendation 18. The City of Aurora should undertake a study on homelessness to gauge the current impact of various outreach mechanisms across all relevant city agencies and stakeholders and explore innovative problem-solving regarding individuals experiencing housing instability.

In conversations with 21CP, several community stakeholders blamed the police for moving homeless encampments. Meanwhile, a number of police officers blamed the City’s leadership for requiring them to do so. It would appear that both the police and community felt frustrated by inconsistencies in the methodologies of the City of Aurora to address this vulnerable population.

For a number of stakeholders, the discussion about homelessness overlapped substantially with the discussion about community safety and policing. Consequently, even as

²⁷¹ *Id.*

²⁷² *Id.*

homelessness is not and cannot be an issue exclusively addressed by APD, it clearly impacts views about community well-being. Therefore, going forward, an evaluation and strategic plan such as a Homeless Outreach Team (“HOT”) comprised of Department of Health and Law Enforcement representatives might be warranted to interface with those dealing with housing instability and address encampments.

Ultimately, a dynamic, proactive problem-solving approach that attempts to address the underlying nature of the homelessness in Aurora can strengthen public safety in the long-term. For instance, in Philadelphia, a coordinated city services meeting was held once a quarter and issues, identified by police and community alike, were brought before city agencies to be addressed and remedied.²⁷³ Dashboards were created to ensure follow-through. The process has been credited with addressing important, underlying public safety issues in the city.²⁷⁴

²⁷³ Philadelphia Police Department, *The Philadelphia Police Department Moving into the 21st Century 2018–2015*, <https://www.phillypolice.com/assets/directives/MovingThePhiladelphiaPoliceDepartmentIntoThe21stCentury.pdf> (last visited May 10, 2021).

²⁷⁴ Jerry Ratcliffe, *Philadelphia Foot Patrol Experiment*, <https://www.jratcliffe.net/phila-foot-patrol-experiment> (last visited May 19, 2021).

AREA 3. ORGANIZATION AND COMMAND STRUCTURE

Organizational Structure

The way that an organization is structured bears significant influence on the way that it accomplishes its mission, goals, and objectives. Generally, the work of a police organization can be structured by function, program or geographical area:

- **Functional.** This is the most common type. The work is divided on the basis of the type of work being done - patrol, investigation, administration.
- **Program.** Work and responsibilities are divided on the basis of the type of program (e.g., type of crime, narcotics, homicide, sex crimes).
- **Geographical.** Work is divided on the basis of geography (e.g., District 1, West Division).²⁷⁵

Most police organizations are hybrids, incorporating all three organizational approaches into their structure. Designing a suitable organizational structure for a police department also requires an understanding of the distinctions between line, staff and support functions:

- **Line functions** are those that work directly to achieve the department's objectives (e.g., Patrol, Investigations, Traffic).
- **Staff functions** are those that assist management in directing the organization and in accounting for the organization's activities (e.g., Budget, Planning, Legal).
- **Support functions** are those that provide support to the entire organization and cut across all functions (e.g., Personnel, Information Technology, Training).²⁷⁶

Furthermore, a good organizational structure within a police department reinforces the principle of *unity of command* such that an individual employee reports to and receives direction from one consistent, long-term supervisor.

APD's organizational structure is typical of many police departments. It is, at a high level, a functional structure, with some elements of program and geographical structures included. For the most part, APD's structure treats line, staff, and support functions in an appropriate manner.

At the same time, all organizational structures contain some idiosyncrasies that reflect important priorities or unique problems. For example – the Community Relations Section (a support function) is a direct report to the Chief, which is somewhat unusual. The Chief of Police moved it from the Investigations Bureau as a part of a number of organizational

²⁷⁵ Darrel Stephens, "Organization and Management," *Local Government: Police Management* (2003).

²⁷⁶ *Id.*

changes that were effective on October 3, 2020. Given the current challenges with community trust and confidence, Chief Wilson appeared to want to be directly engaged with the work of the section and send a message of the importance of strong community relationships, both internally and externally.

In addition to moving the Community Relations Section, the October 3, 2020 organizational structure moved the Operations Support Section from the Operations Division to the Metro Division. We understand from interviews with APD command staff that this change was made to improve the staffing balance between the two divisions and because the Metro Division serves the entire city. The Department's structure was modified again on March 20, 2021 to implement a plan that moved the Public Safety Communications Center from APD to the Deputy City Manager Public Safety Group.

Recommendation 19. The APD should ensure that its directives reflect the recent changes in the organization structure that became effective in 2020 and 2021.

A review of all of the directives related to the Department's organizational structure identified a number of areas that should be updated to reflect the changes made in 2020 and 2021. For instance:

- Directive 3.1 contains descriptions of the Neighborhood Policing Unit and Interpreter Coordinator, but these functions are no longer a part of the Operations Division. It also refers to a "Night Captain" role that no longer exists.
- Directive 3.3 does not reflect the name change to the Professional Accountability Division.
- Directives 1.2, 1.4 and 3.9 have not been updated since 2015.

APD notes that policy changes can lag because it maintains only a limited number of policy writers to memorialize such operational changes into policy. It says that "[t]he Professional Standards Section is revising directives at a rapid pace and will update this directive."²⁷⁷

Although 21CP understands these dynamics, and that organizational changes may need to be made quickly, they should be formally memorialized with appropriate changes to the directive system to ensure everyone is clear about the Department's structure and the various responsibilities of individuals, units, and the like.

Recommendation 20. The crime analysis function should have a lead or supervisory analyst to provide supervision to analysts and coordinate efforts, training and quality control.

²⁷⁷ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 10.

APD has seven crime analysts spread across a variety of units, assignments, and locations. Specifically, APD maintains one crime analyst in each of the three patrol districts, one in Major Investigations, one in the Executive Officer, one in Investigative Support Section, and one in Traffic Section. 21CP heard from analysts that it would be beneficial to have a central place to house queries and to make crime analysis more streamlined, efficient, and effective. 21CP concluded that the Department would be well-served to have a lead or supervisory analyst charged with ensuring quality control, appropriate oversight, and coordination of efforts where appropriate. We understand from the Department that a staff member was promoted in November 2020 to the position of Lead Crime Analyst and assigned to the Chief's office.²⁷⁸

Recommendation 21. APD should consider hiring a fulltime video specialist for the Chief's office and another for the Training Academy to meet the coming demands of SB217 and the necessity of the Training Academy to have a more readily accessible video specialist.

Police departments are encountering an increased need to process, analyze, and address video. For instance, the newly-passed SB217 requires that body-worn camera footage be released within 21 days after an allegation of misconduct, or within 45 days if the release could jeopardize a criminal investigation. Police departments are utilizing body worn camera footage and creating their own videos for training purposes both in an academy setting and remotely. To meet these types of public disclosure and training needs, APD should have sufficient support staff available for addressing video issues. APD agrees with the recommendation, noting that it “currently ha[s] a Visual Media Specialist (videographer/photographer) assigned to the Media Relations Detail in the Chief's Office” but that “the academy does not have a dedicated videographer.”²⁷⁹

Deployment & Staffing

A police department's deployment strategy is a complex and extremely important component of delivering effective police services. In April 2017 the City of Aurora contracted with the Novak Consulting Group to conduct a staffing analysis of the police department and the emergency communications center.²⁸⁰ The analysis report is a comprehensive document that included 43 recommendations for the police department's consideration.²⁸¹ Although the policing environment has changed between 2017 and 2021, many of that report's recommendations are still valid, and it appears that APD can still take fuller advantage of that analysis' findings and identified options for future deployment strategies.

²⁷⁸ *Id.* at 11.

²⁷⁹ *Id.*

²⁸⁰ Novak Consulting Group, *City of Aurora Police Department and Communications Center Staffing Study* (Sept. 7, 2017).

²⁸¹ *Id.*

Recommendation 22. APD should create, in partnership with other relevant City stakeholders and the Aurora community, a Deployment and Staffing Plan that might enhance APD’s responsiveness to community needs.

APD suggests that “the creation of the new Community Relations Section” will help to address the development of a Deployment and Staffing Plan that can maximize the Department’s responsiveness to community issues and problems.²⁸² As that Section contemplates work in this area, 21CP has some more specific recommendations.

Recommendation 22.1. APD should systematically inventory previous recommendations and consider, in collaboration with other City stakeholders and community members, potential new changes to improve the call response that can promote better, more effective, more efficient, and more equitable responses to calls not relating to violent crime.

As this report summarizes elsewhere, many communities are engaged in identifying how responses or services other than police might be best situated to handle community problems or issues that law enforcement currently addresses. The calls for service data summarized above point to a host of community challenges that do not relate to violent crime or the enforcement of laws that the Aurora community could determine would be better addressed through formalized responses that separate from the APD. To this end, some prior recommendations from previous reviews highlighted the amount of time that APD officers spend addressing non-emergency issues and made recommendations for alternative response mechanisms. For example, a 2016 Efficiency Committee report “identified several types of service calls, such as incorrigible children and medical calls, which could rely on emergency call takers to direct callers to alternative resources rather than deploying a Patrol Officer.”²⁸³ The recommendations, “if fully implemented, the service level adjustments recommended by the Efficiency Committee would yield approximately 22,000 hours of additional patrol labor availability per year.”²⁸⁴

Recommendation 22.2. APD should collaborate with City stakeholders and the Aurora community to identify and implement outstanding recommendations in the Redistricting Study²⁸⁵ and Staffing Study.²⁸⁶

The 2017 Staffing Study and 2018 Redistricting Study both make a number of promising recommendations that the City and APD should work to more fully implement. Specifically,

²⁸² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 11.

²⁸³ Novak Consulting Group, *City of Aurora Police Department and Communications Center Staffing Study* (Sept. 7, 2017) at 93–94.

²⁸⁴ *Id.* at 95.

²⁸⁵ *Id.*

²⁸⁶ Corona Solutions, *Redistricting Study for Aurora, CO Police* (July 29, 2018).

the City, APD, and the community might work together to establish a formal target for community engagement, which the 2017 Staffing Study contemplates. Additionally, given that APD's police districts are relatively large, with travel times for officers exceeding 30 minutes when call volume is high, the City, APD, and the community could review the effectiveness of District and Beat boundaries.

Recommendation 22.3. APD should conduct a comprehensive organizational review which examines each unit and assignment, its purpose, workload and outcome to ensure that the patrol function is adequately staffed to respond to calls for service and work with the community.

A police department's organization and functional units should reflect the service needs of the community. Often, police executives add new programs, functions, and priorities without assessing the effectiveness of current programs or reviewing the operational structure of the entire department. 21CP recommends that, instead, APD work to ensure that its staffing allocation and organization reflect both the priorities of the community and the actual, day-to-day workload of its personnel. This is of particular import to patrol staffing.

The Novak Staffing Study, which analyzed 2017 data, indicated that APD required an additional 80 officers to meet a target of officers using one-third (33 percent) of their time to work directly with the community and address crime and disorder problems. (This assumed that APD would maintain a ten-hour shift.) Many police departments use higher benchmarks in terms of how much of an officer's time should be spent working on community problem-solving. Additional patrol staff can be made available by re-assigning officers from specialized functions to patrol or civilianizing work currently being done by officers and returning those officers to patrol, and not just by hiring more officers.

APD indicates that there are 492 patrol officers at APD, of which approximately 250 are assigned to the Patrol Team. This means that about half (50 percent) of all officers work in patrol. A standard often used is between 60 and 66 percent of all patrol officers in a department should be responding to calls for service and working with the community.²⁸⁷ In other words, about two-thirds of APD members with the rank of officer should be assigned to patrol, respond to 911 calls, and engage the community. APD notes that, in addition to the patrol team, the Department's other units (such as SWAT, Traffic, PAR, and others) also

²⁸⁷ See James McCabe, ICMA Center for Public Policy Analysis, "An Analysis of Police Department Staffing: How Many Officers Do You Really Need?," https://icma.org/sites/default/files/305747_Analysis%20of%20Police%20Department%20Staffing%20%20McCabe.pdf (last accessed May 12, 2021); Jeremy M. Wilson and Alexander Weiss, Office of Community Oriented Policing Services, U.S. Department of Justice, "A Performance-Based Approach to Police Staffing and Allocation," (rev. 2014), <https://cops.usdoj.gov/RIC/Publications/cops-p247-pub.pdf>.

respond to calls for service, which means that more than three-quarters (76 percent) of sworn staff can field calls.²⁸⁸

The percentage of officer time dedicated to proactive policing should include the time a special unit or dedicated officers spend on community policing work. 21CP understands, based on interviews, that the PAR sections were originally designed to be the community policing unit of APD. However, during these same interviews, we heard that the majority of the PAR's time is being used to address the homeless problem in Aurora.

Recommendation 22.4. APD should continue to ensure that a lieutenant is working on every patrol shift and working the same shift schedule as other patrol personnel.

Personnel interviews with 21CP indicated that APD previously did not “always have a lieutenant on every shift because lieutenants work twelve-hour shifts while sergeants and officers work a ten-hour shift in Patrol.” Currently, four Patrol Lieutenants are assigned to each District. They work a unique twelve-hour shift: two work from 5:00 a.m. to 5:00 p.m. and two work from 3:00 p.m. to 3:00 a.m., on a three-week rotation of three days on, four days off, three days on, four days off, four days on, three days off.²⁸⁹ Their days off are staggered. Because of the rotation, no Lieutenants work from 3:00 a.m. to 5:00 a.m., and no Lieutenants work every third Wednesday.

During our evaluation, 21CP formed the preliminary conclusion that APD should work to ensure that a lieutenant is available and working on all patrol shifts. To do so, it appeared likely that having lieutenants work the same schedule as other patrol personnel would be beneficial. 21CP understands from APD that, as of May 2021, the Department has gone to 24/7 coverage with a lieutenant on every shift. To the extent that this change is an enduring one, the Department has addressed the concern that we previously identified, and we commend the command staff for identifying and addressing the issue.

In response to this recommendation, APD told 21CP:

We agree with this recommendation, but it should be noted that to accomplish this, 6 additional Lieutenant positions would need to be created. It should be noted that in March of 2021 the Patrol Lieutenants schedule was altered to provide 24/7 coverage. This involves one Lieutenant being on duty in the city at all times. The Duty Lieutenant schedule rotates between the Lieutenants in all 3 Districts. Instead of working the normal night shift Lieutenant

²⁸⁸ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 12.

²⁸⁹ Novak Consulting Group, *City of Aurora Police Department and Communications Center Staffing Study* 35 (Sept. 7, 2017).

schedule (3PM-3AM), each week a Duty Lieutenant now works 5PM-5AM which allows for there to be a Lieutenant on-duty at all times in one of the three Districts. The other two Districts still have a Sergeant covering as an Acting Lieutenant from 3AM-5AM.²⁹⁰

Command Staff

APD's promotional processes are managed by the Civil Service Commission for all ranks, with the exception of Commander, Division Chief, and Deputy Chief, who all serve at the Chief's pleasure. The promotional process for the ranks above Captain are the responsibility of the Chief of Police. 21CP understands that, in the past, the Chief conducted individual interviews of potential candidates and made their decision based on the interview and personal knowledge of the candidate's background and suitability for promotion.

Chief Wilson has made several promotions to the upper ranks since her permanent appointment as Chief, including the Deputy Chief, who was promoted to Commander from Lieutenant and then to Deputy Chief. Chief Wilson currently plans to use the most recent promotional processes described below to fill future vacancies in these positions:

Deputy Chief (1). Deputy Chief shall be selected from the position of Division Chief. The positions of Division Chief and Commander shall be selected from the ranks of either Captain or Lieutenant. The current Deputy Chief was selected by the Chief on the basis of her personal knowledge of his qualifications, past performance, and a determination that he was a good match for her vision for the direction of the Department. He also has significant time before retirement, leading the Chief to believe they could work together long enough to make substantial enhancements in the department and strengthen community relationships.

Division Chief (4). In the last process, Chief Wilson asked candidates to submit a resume, respond in writing to two questions so she could get a better sense of their writing skills, and participate in one-on-one interviews. She made the selection on the basis of this information and her personal knowledge of the candidate's past performance and ability to support her vision of the department going forward. A Division Chief can be promoted from the Captain and Commanders rank.

Commander (6). There were eight Lieutenants and Captains that participated in the most recent process for promotion to commander. That process involved a presentation and interview with a group of the division chiefs that was video-recorded. The video was shared with members of the Community Advisory Team, which

²⁹⁰ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 12.

provided feedback to the Chief on who they believed were best suited for the position. The Chief then made the final selection based on the input from the Division Chiefs, Community Advisory Team, and her personal knowledge of the candidates’ past performance and suitability for the position. Commanders can be promoted from the Lieutenants and Captains rank.

Captain (4). The Captain’s promotional process is managed by the Aurora Civil Service Commission. A candidate for Captain must have two years in grade as an Aurora Lieutenant, currently be holding the rank of Lieutenant, and have earned a bachelor’s degree from an accredited college or university. Additionally, any candidate who has a combination of 80 hours suspension or greater in the two years preceding the first day of testing is ineligible to test. The Civil Service Commission scheduled a Captain’s assessment center for the week of February 8, 2021.

The Department only has 4 Captain positions. There are 6 Commanders. It is unusual to find more positions at a higher rank in a police structure. 21CP understands that, over the past number years, the former Chief had been increasing the number of Commanders and reducing the number of Captains.

Recommendation 23. APD should consider non-sworn and external applicants to fill command staff vacancies.

The APD command staff is not as representative of the diversity of the Aurora’s communities as it should be. There are three women and two black command staff members. Although the Latino population comprises 28 percent of the Aurora community, there are no Latinos on the staff.

Table 15. Aurora PD Command Staff By Race, Gender

Rank	Male	Female	White	Black
Chief		1	1	
Deputy Chief	1		1	
Division Chief*	4		4	
Commander	5	1	5	1
Captain	4		4	
Manager		1		1
Total	14	3	15	2

*One Division Chief is nonsworn

Source: 21CP Analysis of APD Data.

21CP understands that there are changes expected in the near future among the command staff ranks, as there are pending retirements, and the Division Chief will be leaving the Department to take a Chief’s position in Abilene, Texas.

Like most police agencies the APD has historically promoted from within its agency. Promotion to Sergeant and Lieutenant requires that candidates have served in the rank below. Table 16 shows the current demographics of the APD ranks of Sergeant and Lieutenant.

Table 16. Demographics, APD Sergeant and Lieutenants*

	Lieutenant**	Sergeant**
Male	29 (94%)	112 (96.5%)
Female	2 (6.5%)	4 (3.4%)
Race/Ethnicity		
White	28 (90%)	97 (84%)
Black	2 (6.5%)	6 (5%)
Latino	1 (3.2%)	12 (10%)
2 or More		1
American Indian		1
Hawaiian/Pacific Islander		1
Total	31	116

* Sworn Demographics as of October 26, 2020.

** Includes 4 Acting Lieutenants and 4 Acting Sergeants.

Source: 21CP Analysis of APD Data

APD's current practice is to fill vacancies from within the organization – Commanders are promoted from the ranks of Captain and Lieutenant. Division Chiefs are promoted from the ranks of Captain and Commander. The diversity in these ranks is limited as well – Captains are all White Males. There are two female Lieutenants, two Black Lieutenants, and one Latino Lieutenant. It is 21CP's understanding that the ranks above Captain are not governed by the CSC.

To enhance the diversity of background and experience of the command staff, APD should consider opening command staff positions to external applicants, both sworn and non-sworn. Civilians increasingly are holding leadership positions in police departments across the country. The Los Angeles Police Department appointed a civilian manager of their Counterterrorism and Special Operation Bureau.²⁹¹ The Chicago Police Department appointed a civilian Deputy Superintendent of its Administrative Bureau.²⁹² The Philadelphia Police Department appointed a civilian Deputy Commissioner as the third

²⁹¹ William King and Jeremy Wilson, Office of Community Oriented Policing Services, U.S. Department of Justice, *Integrating Civilian Staff into Police Agencies* (2014).

²⁹² *Id.*

highest ranking person in the department and in charge of Services, Strategic Planning and Innovation.

Hiring civilians can have many benefits. For one, “[p]olice agencies can hire civilians who are more representative of the population without the limitations imposed by the physical or background requirements for sworn officers.”²⁹³ More important still is that bringing sworn members into executive and command ranks, like civilians, can quickly diversify the upper ranks and allow a department to benefit from skills and experiences that might otherwise be lacking in the organization. As APD considers its hiring and staffing approaches in the future, the broader civilianization of appropriate functions within the Department can bring highly skilled professionals and outside perspectives to the organization in a meaningful way.

21CP understands from APD that, in early 2021, it hired a civilian Chief, who oversees Community Relations. A civilian at the Chief level separately oversees Business Services. The Department noted to 21CP that a civilian head of Internal Affairs or of its employee assistance programs may be something for consideration in the future. APD notes that “[a]t this time, there are no vacancies in Command, however, this could be considered going forward depending on qualifications of interested external candidates.”²⁹⁴

Recommendation 24. APD should develop, and codify in policy, a more formal process for selecting Commanders and Division Chiefs. The process should consider including external interview panels (police executives and community members).

Involving community representatives in the promotional process for Commanders and Division Chiefs can help establish legitimacy and transparency. For example, a structured interview panel consisting of community stakeholders can provide insights, feedback, and recommendations to the Chief which can inform final decisions. The selection of Commanders and Division Chiefs is critical in ensuring progress is made in reform efforts.

Just as it is essential to involve community representatives in the recruitment of officers, so it is in the selection of APD leaders. “After all, these are the people who are the primary recipients of police services, and they have a vested interest and a unique perspective on what constitutes effective policing.”²⁹⁵ By asking for the community’s input on the selection of command personnel, APD will get a better idea of what leadership capacity it needs to build.

²⁹³ *Id.* at 8 (2014).

²⁹⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 12.

²⁹⁵ Kevin Morison, Office of Community Oriented Policing Services, U.S. Department of Justice, *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success* (2017).

The Chief of Police has been utilizing the Community Police Advisory Team (CPAT) in the processes to select the last two Commanders. Because of Covid-19 restrictions, the Department recorded interviews and provided videos to CPAT members. The CPAT has provided the Chief with formal feedback, and the Chief has indicated that CPAT has received nearly as much input as command staff in the hiring decisions. To that end, for these prior selection processes, CPAT and representatives of the Department selected the same top candidates, which APD believes lends even greater confidence to the promotional decisions.

Recommendation 25. The APD should implement a leadership and professional development program for command staff.

APD does not currently have a training or leadership development program specifically aimed at command staff or Lieutenants. The traditional approach in developing police leaders is to move people through a variety of assignments and promote up the ranks. “Instead of treating leadership as the property of the leader, with individual enhancements resulting in hoped for benefits to the organization, developing leadership must focus on creating social capital within an organization.”²⁹⁶ This requires investing in developing leaders throughout a police department, which must be operationalized by offering opportunities to learn and developing essential leadership skills and knowledge:

Highly regarded programs and schools that provide leader development opportunities for mid- and senior-level managers include the University of Louisville’s Southern Police Institute, Northwestern University’s Center for Public Safety, and Johns Hopkins University’s Division of Public Safety Leadership. In addition, the FBI National Academy, the Police Executive Research Forum, and individual organizations utilizing the International Association of Chiefs of Police’s Leadership in Police Organizations (LPO) course offer opportunities specifically for police leadership development.²⁹⁷

APD should also explore partnerships with academic stakeholders and the Aurora business community aimed at developing and implementing structured, ongoing professional and leadership development programs.

The Department has noted to 21CP that it does send a number of people to external course opportunities and maintains an annual budget to do so. It indicated that it usually offers the opportunities to people who are testing or who say that they are interested in moving up in the ranks. The Department has sent personnel to the FBI Academy, the FBI Trilogy course, local university leadership courses, and to the Leadership Aurora program, among others. 21CP recommends that the Department go further and codify these, and other, opportunities

²⁹⁶ Edward Flynn and Victoria Herrington, Harvard Kennedy School and National Institute of Justice, “Toward a Profession of Police Leadership,” *New Perspectives in Policing* at 4 (June 2015).

²⁹⁷ *Id.* at 6.

into a formalized program that personnel can consult and understand as they look for pathways to professional growth. APD “[a]grees [that] a more formal program would be beneficial and would supplement many programs we currently utilize.”²⁹⁸

Recommendation 26. APD command staff should develop and implement a plan to increase their level of visibility throughout the department. This should include an internal communications plan aimed at ensuring that department employees are kept informed on important issues.

In both focus groups and individual interviews, Department members expressed concern about the visibility of command staff members. Particular concern was expressed by some that Command-level personnel are not present after critical incidents.

Additionally, significant concern was expressed about the communication from the Chief and command staff about prominent issues relating to law, policy, and performance expectations. One example that APD personnel cited related to Colorado Senate Bill 217. Although the Department arranged for a briefing on the bill by legal staff, the video-presentation format provided no opportunity for personnel to ask operational and policy questions.

APD should develop a plan for ensuring open, ongoing communication with personnel about important issues, job expectations, and community dynamics. Such a plan can help to ensure that internal communications are not considered “extra” or something to be provided “as needed” but instead become an integral part of the Department’s day-to-day operations. APD told 21CP that it “agree[s] [that] a more formal process should be instituted to enhance visibility and communication to our internal audiences.”²⁹⁹

²⁹⁸ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 13.

²⁹⁹ *Id.*

AREA 4. SELECTION, SUPERVISION, AND SUPPORT OF PERSONNEL

For as much as sound policies, detailed procedures, and effective training on performance expectations are essential, it is ultimately a Department’s individuals – the organization’s people – that determine how successfully a police department delivers service consistent with the needs and values of their community.

General best practices in human resource management emphasize six principles: (1) building and implementing a human resources strategy; (2) hiring the right people; (3) keeping them; (4) investing in them; (5) empowering them; and (6) promoting diversity.³⁰⁰ These general principles are applicable to police departments.

The selection, supervision, and support of employees are the bases for ensuring staff are sufficiently skilled, accountable, and resilient. Selecting the right people and empowering them with knowledge, skills, and resources can prevent or counteract the emergences of damaging subcultures or informal ways of “doing business” that are inconsistent with a department’s vision and goals.³⁰¹

For these reasons, the following sections consider APD’s recruitment, hiring, and selection of officers; its Field Training Officer program for providing in-depth, on-the-job training for new officers after new recruit training is complete; the Department’s training function generally; and APD’s early intervention and peer support initiatives.

Recruitment, Hiring and Selection

Any assessment of a police force’s effectiveness must include a discussion of who the police are and how they are recruited and selected. This includes a consideration of the experiences, characteristics, and backgrounds of sworn personnel.

Although demographic diversity is unlikely to address, by itself, the concerns of fair and impartial policing, a police organization comprised of people that reflects the demographics of the population it serves can increase trust between the department and the communities that it serves. As President Obama’s Task Force on 21st Century Policing observed:

Achieving diversity in entry level recruiting is important but achieving systematic and comprehensive diversification throughout each segment of the

³⁰⁰ See, e.g., P.G. Aquinas, *Human Resource Management: Principles and Practice* (2009); Michael Armstrong, *A Handbook of Human Resource Management Practice* (2006).

³⁰¹ See Steve McCartney and Rick Parent, *Ethics in Law Enforcement* 119–126 (2015), <http://opentextbc.ca/ethicsinlawenforcement/>; Barbara Armacost, “The Organizational Reasons Police Departments Don’t Change,” *Harvard Business Review* (Aug. 19, 2016), <https://hbr.org/2016/08/the-organizational-reasons-police-departments-dont-change>.

department is the ultimate goal. It is also important to recognize that diversity means not only race and gender but also the genuine diversity of identity, experience, and background that has been found to help improve the culture of police departments and build greater trust and legitimacy with all segments of the population.³⁰²

A diverse police organization can help, among other things, to:

- Foster trust, which can ease tensions between the department and the community;
- Instill a greater willingness in victims to report incidents and cooperate with the police in investigations; and
- Establish a police culture open to differences, receptive to change, and accustomed to managing different viewpoints and perspectives.

This section describes APD's current practices with respect to recruitment, hiring, and retention. It offers recommendations aimed at reflecting within the APD the demographics, experiences, and values of the communities it serves.

At the outset, it must be observed that in the wake of the killing of George Floyd in May 2020 and national discussions on issues relating to policing and race, cities across the country report that they are encountering challenges in attracting high-quality new officers with the desired diversity of experience and backgrounds. Among those who might be interested in advancing public service or exploring a career aimed at enhancing community well-being, careers in law enforcement may not as readily align as other forms of service or careers. Recruiting qualified applicants, hiring diverse candidates, and retaining high-performing officers is, in many ways, an ever-evolving challenge for police departments nationally. As the discussion and recommendations below outline, the Department's opportunities for navigating this climate likely resides with coordinated, city-wide efforts to cultivate relationships and in collaborating with community stakeholders on the recruitment and hiring process.

Currently, APD's sworn staff does not wholly reflect the diversity of the Aurora community. An overwhelming number of APD personnel are white males. Indeed, they are represented at a rate substantially beyond their representation in the Aurora community at-large. Specifically, as Table 16 summarizes, whites are overrepresented within the Department by a margin of some 45 percent as compared to the Aurora population. Black, Asian, and Hispanic or Latino³⁰³ officers are underrepresented compared to the population. Focusing solely on those officers assigned to patrol, only 2 percent of officers are Black, and nine percent Hispanic or Latino. Nearly four out of five (79 percent) are white. Meanwhile, among

³⁰² *Final Report of the President's Task Force on 21st Century Policing* at 17 (2015).

³⁰³ Because APD's internal data uses the classification "Hispanic or Latino," this report adopts the classification to ensure consistency with APD's data.

APD’s command staff, 15 leaders are white, 2 are Black, and officers of other racial or ethnic groups are not represented.

Meanwhile, female officers account for twelve percent of the sworn members. Only two members of APD’s 17-member command staff are women, and only 3 out of 50 officers (6 percent) at the rank of lieutenant or above are women.

Table 17. Demographics of APD, APD Command Staff, and City of Aurora, 2020

Demographic Characteristics	Aurora, CO ³⁰⁴		Aurora Police Department		APD Command Staff Only ³⁰⁵	
	Number	Percent	Number	Percent	Number	Percent
Race and Hispanic Origin						
White, not Hispanic or Latino	170,680	45.0%	610	79%	14	87.5%
Black or African American Alone	60,686	16.0%	31	4%	2	12.5%
American Indian and Alaska Native Alone	3,414	.9%	4	0.1%	0	0%
Asian	23,895	6.3%	15	1.9%	0	0%
Native Hawaiian and Other Pacific Islander	1,138	.3%	1	0.5%		0%
Hispanic or Latino	107,718	28.4%	80	10.4%	0	0%
Two races or more	20,482	5.4%	31	4%	0	0%
Gender						
Male	186,989	49.3%	675	87.4%	15	93.8%
Female	192,300	50.7%	97	12.6%	1	6.3%

Source: 21CP Analysis of APD Data; United States Census Bureau.

Recruitment is the first step in the selection and hiring process. Recruitment efforts help to identify and encourage potential, qualified candidates to apply to be an APD officer. To be an eligible recruit, the candidate must meet certain minimum requirements: they must be 21 years of age or older; a U.S. citizen or a lawful, permanent resident; and have a high school diploma or GED.³⁰⁶

³⁰⁴ United States Census Bureau, Quick Facts for Aurora, CO (July 1, 2019), <https://www.census.gov/quickfacts/fact/table/auroracitycolorado/PST045219>.

³⁰⁵ Aurora Police Department, APD Sworn Demographics (Oct. 26, 2020).

³⁰⁶ There are other minimum requirements including no felony convictions, a valid driver’s license, and no marijuana usage within one year of the date of application. City of Aurora, Residents, Public Safety, Police, Join the APD, Entry Level Applicants, <https://www.auroragov.org/cms/One.aspx?portalId=16242704&pageId=16900652> (last visited July 16, 2021).

An analysis of APD recruitment data for 2018, 2019, and 2020 found that, of 5,964 applicants, approximately 10 percent were Black and 22 percent were Hispanic. About 19 percent were female.

Available population data suggests a healthy diversity in the greater Aurora community among individuals between the ages of approximately 21 and 54, who are the most likely to apply to be a police officer.³⁰⁷ The opportunity and possibility to recruit racially diverse candidates who are already a part of the Aurora community is present.

It is a common practice in jurisdictions across the United States for hiring and promotional processes to be split, or shared, between a police department and a city agency. The city agency may be a Civil Service Commission or City Human Resource Department, or a combination of both. It is 21CP's experience which was also illustrated by the presentation to the Aurora's Public Safety, Courts and Civil Service Committee that a city's Human Resource Department, and appropriate operational departments like Police and Fire have a more active and supportive role in the hiring of personnel. This is true even when a Civil Service Commission has the final authority.³⁰⁸

The Aurora Civil Service Commission ("CSC") as established by the City Charter in 1967 and is responsible for administrating a Civil Service system for uniformed members of the Fire and Police Department. The Rules and Regulations of CSC states the Commission is responsible for:

1. Establishing qualifications and service requirements, examination and certification of all applicants for original (cadet and entry-level) and lateral-entry appointment to the Civil Service system; and
2. Promotional appointment within the Civil Service system; and
3. Conducting Civil Service disciplinary review hearings.³⁰⁹

The CSC has sole authority over these various processes.

There are multiple steps in the CSC hiring process for APD – and many ways a candidate can fall out of the process, either by choice or by failing to pass a particular step.

In discussions with stakeholders, 21CP heard that CSC must be acknowledged for being responsive to APD requests and recommendations like year-round hiring, a streamlined out-

³⁰⁷ Statistical Atlas, Race and Ethnicity in Aurora, Colorado, <https://statisticalatlas.com/place/Colorado/Aurora/Race-and-Ethnicity> (last visited May 5, 2021).

³⁰⁸ Presentation by Aurora Department of Human Resources to the City Council, "Civil Service Comparisons," August 17, 2020.

³⁰⁹ City of Aurora, *Rules and Regulations of the Civil Service Commission*, https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/City%20Hall/Boards%20&%20Commissions/Civil%20Service%20Commission/CSCRulesRegsFinal.pdf (last visited May 5, 2021).

of-state applicant process, and the elimination of the citizenship requirement.³¹⁰ (As noted previously, the U.S. Citizenship requirement was amended to accept applications from legal permanent residents.³¹¹)

APD has the authority to administer the process for making lateral hires – or individuals who already are sworn police officers and typically are coming from other police agencies. Within this process, the CSC is responsible for accepting and screening applications for minimum eligibility requirements. When a candidate meets these minimum requirements, APD’s Background Detail and Professional Standards Section Lieutenant then has the responsibility for managing the selection process. Background investigations are conducted by APD’s Background Detail. Historically, APD’s Lateral Academy has been 12 to 14 weeks in length. In recent years, the training has been reduced to approximately 8 to 10 weeks based on the number of lateral recruits in the class.

We note here that APD has been experiencing – as many other police departments have been – an elevated rate of sworn personnel leaving the department. In 2020, “[p]olice civil service turnover” was “the highest since 2015 at 19.9%, with a total of 87 law enforcement officers.”³¹² At least 63 of these individuals either retired or voluntarily resigned – with the rate of retirements in 2020 nearly double that of 2019.³¹³

Recommendation 27. APD and the City of Aurora must commit to expanding the diversity of APD so that it reflects the backgrounds and lived experiences of Aurora’s various communities.

The Aurora Police Department’s guiding policy for recruitment is Directive 8.8, Police Department Involvement in Recruitment, Selection and Promotion.³¹⁴ That policy indicates that the Chief of Police has the authority and responsibility for the recruitment activities of the Police Department. The Chief may designate the responsibility – and does so, tasking the responsibility to the Department’s Recruitment Unit, which is responsible for recruiting candidates for entry-level and lateral police officers. Nevertheless, this directive makes clear that all members of APD should be aware of positive recruitment techniques and help the Department in seeking qualified individuals for employment.

Standard Operating Procedures (SOP) RU 1.1, Recruiting Unit Administration, details some of the more specific roles and responsibilities of the Recruiting Unit. The Unit’s mission statement commits it to proactively locating, contacting, and recruiting the most qualified

³¹⁰ Aurora Police Department, *2019 Recruitment Analysis and 2020 Recruitment Plan* (Dec. 19, 2019).

³¹¹ *Id.*

³¹² City of Aurora, PSC Report, “Civil Service Police & Fire Turnover and Reasons,” *in* City of Aurora, City Council, Public Safety, Courts and Civil Service Police Committee, Agenda (Feb. 25, 2021) at 88.

³¹³ *Id.* at 89.

³¹⁴ APD Directive 8.8 at 1.

men and women that will, among other things, “mirror the diversity within the City of Aurora.”³¹⁵ Practically, the responsibility for doing so falls to the APD officers and employees assigned to the Unit. The officers must “promote minority recruitment by utilizing EEOC goals of the department to better reflect the ethnic makeup of the community.”³¹⁶ They are to “work with diverse groups within the City, such as the Human Relations Commission, on recruitment issues.”³¹⁷ Ultimately, the objective of the Recruiting Unit is to “recruit the highest quality individuals to the organization with an emphasis on increasing the diversity of our workforce, as well as recruiting within our community.”³¹⁸

In discussions with APD personnel, it appears that relationship-based recruiting – including prior interactions between current police officers and potential candidates in the community, and positive word of mouth – were identified as some of the most effective recruiting methods.³¹⁹

Separately, APD’s use of a referral incentive program existing personnel receive monetary incentive for successfully recruiting or referring a hired candidate to the Department – was cited as an effective tool that aligns with the recognition reflected in APD’s current policy that recruitment is, and should be, a part of the Department’s everyday interactions with the public.

The responsibility for enhancing the diversity of APD officers cannot be relegated solely to APD and the Civil Service Commission. Although the CSC makes the final decisions on what specific candidates to hire, responsibility for attracting members to a dynamic, diverse police department must be shared across the City and City stakeholders.

To this end, APD should consider adopting a Community Collaboration model for recruitment.³²⁰ Within this model, utilizing community-based organizations to help recruit and having community members participate in interview panels can help to ensure that more qualified, diverse candidates progress further through the process while helping to distribute ownership of hiring outcomes and the composition of the police department more broadly. Such work should be coordinated by a city official or entity with sufficient authority to bring together representatives from across city government and the Aurora community – helping to ensure that tangible progress is being made.

³¹⁵ APD, Standard Operating Procedures (SOP) RU 1.1, *Recruiting Unit Administration* (last rev. May 12, 2011) at 1.

³¹⁶ *Id.* at 3.

³¹⁷ *Id.* at 4.

³¹⁸ Aurora Police Department, *2019 Recruitment Analysis and 2020 Recruitment Plan* (Dec. 19, 2019) at 1.

³¹⁹ ICMA and VERA Institute of Justice, *The Model Police Officer: Recruitment, Training, and Community Engagement* (2018).

³²⁰ Walter A. Tangle and Andrew Morabito, “Minority Recruitment: A Working Model,” *Police Chief*, <https://www.policechiefmagazine.org/minority-recruitment-a-working-model/?ref=18db8ea35917d5e4e56108d950ed98b4> (last accessed May 5, 2021).

APD indicates that its “recruitment unit actively works to market APD to diverse candidates both locally and nationally. Additionally, the lateral process provides APD more latitude to intentionally select” candidates with diverse backgrounds and experiences.³²¹ “Because [o]f this they can aspire to recruit as many minority candidates as possible.”³²² In contrast, “[t]he basic, or entry-level officer, hiring authority is controlled by the Civil Service Commission (CSC).”³²³

Recommendation 27.1. Targeted recruiting materials and efforts should be funded, developed, and used to attract a diverse range of candidates. The effectiveness of these marketing efforts should be routinely assessed.

Inspiring greater diversity among APD applicants will likely require a coordinated and strategic effort to forge relationships and have conversations with communities that the Department may not have regularly interacted. For example, APD might elect to visit local high schools and community colleges with diverse populations, forge relationships in Black and Latino churches, and conduct outreach to LGBTQ+ organizations could expand minority applicants. The Department might focus its advertising and social media outreach to outlets with strong engagement from historically underrepresented and marginalized communities. Visiting historically Black Universities, forging relationships in Latino churches; and conducting outreach to LGBTQ+ organizations could attract minority applicants. Rather than defining success by the number of events attended or amount of contact details collected, as the Department conducts new types of outreach, it should analyze how the applicants that were successfully hired became involved with APD – subsequently, recruitment efforts leading to successful efforts can be replicated and grown. APD notes that its “Community Relations section can assist with” these efforts.³²⁴

Recommendation 28. The City and APD should invest more of its resources on recruitment efforts.

APD’s Recruitment Unit currently is comprised of one Sergeant, two full-time Recruiters, and three Auxiliary Recruiters. According to the Recruitment Unit,³²⁵ APD attended approximately 80 events in 2019. The Unit ran 46 “So You Want to Be a Cop” seminars – which prospective applicants are required to attend. Additionally, they provided support and coaching with state applicant testing and physical fitness tests.

³²¹ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 13.

³²² *Id.*

³²³ *Id.*

³²⁴ *Id.*

³²⁵ Aurora Police Department, *2019 Recruitment Analysis and 2020 Recruitment Plan* (Dec. 19, 2019).

Even as these efforts are commendable, APD personnel indicated to 21CP that they see room for improvement and innovation. As one APD stakeholder said, “the Recruitment Unit tries, but they are only two people” – referring to the full-time Recruiters who, by the accounts of multiple personnel, carry the bulk of the day-to-day responsibility and work for recruitment. This level of full-time commitment seems to be one of the primary reasons why, as the Department’s 2019 Recruitment Analysis and 2020 Plan noted, a number of “projects have [unfortunately] taken the backseat in recent years, [such as] recruiting women and Muslim outreach[.]”³²⁶

Recommendation 28.1. The City should evaluate whether APD’s recruitment initiatives are appropriately resourced to meet community needs and the Department’s overall role and mission.

The City Council has previously allocated funds in support of APD’s recruitment efforts. 21CP understands that these funds were used for media campaigns and to support recruiting trips outside of Aurora. We recommend that APD and the City conduct a comprehensive assessment of the Department’s recruitment needs in light of community conceptions of APD’s role in public safety going forward and develop a multi-year recruitment plan that addresses those needs, including estimated costs. APD noted to 21CP that the Department “agree[s] that the recruiting unit could benefit from a multi-year recruiting plan and examination of estimated costs.”³²⁷

Recommendation 28.2. APD’s recruiting unit should consider increasing its focus on online recruiting opportunities.

A representative survey conducted by the International City/County Management Association (“ICMA”) found four out of five (79 percent of) Human Resource professionals identify social media as top police recruiting strategy.³²⁸ This is consistent with APD’s experience. In fact, nearly three-quarters (71 percent of) Recruit Class 2020-1B said that they were drawn to APD through some form of electronic media; department website, online industry, job search, social media, governmentjobs.com and others. Given the significance of online-based recruiting activities, APD’s recruiting unit should consider investing more of its time and focus on web- and social-media-based recruiting activities. APD told 21CP that it agrees with this recommendation.³²⁹

³²⁶ *Id.* at 6.

³²⁷ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 14.

³²⁸ ICMA and VERA Institute of Justice, *The Model Police Officer: Recruitment, Training, and Community Engagement* 11 (2018).

³²⁹ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 14.

Recommendation 29. The Civil Service Commission (“CSC”) should conduct a review of current hiring criteria to determine their impact in terms of attracting and hiring candidates of varying races, ethnicities, genders, sexual orientations, socio-economic backgrounds, experiences, and characteristics. The Commission should identify what changes might be made to enhance APD’s diversity.

21CP strongly encourages the Civil Service Commission to partner with the Aurora Department of Human Resources, City Attorney, and Police Department to do this review. The Baltimore Police Department recently revamped their hiring process and established a RecruitStat which is a weekly review of progress on recruiting, hiring, and retention.³³⁰ Aurora may benefit talking with Baltimore about their efforts.

Aurora’s Civil Service Commission provided data on APD’s selection and hiring process for the years 2018 through 2020. Among other things, analysis of the data allows for a more specific understanding of where particular types of candidates are falling out of the process.³³¹

For the three-year period from 2018 through 2020, the CSC received 5,964 applications. Of these applicants, 183 (3 percent) were hired overall. At the same time, fewer than 1 percent of Black applicants, and slightly more than 2 percent (2.4 percent) of applicants identified as Hispanic, made it through the selection process and were ultimately hired.

Table 18. APD Recruitment, Selection, Hiring, 2018–2020

	Total	Male	Female	N/R*	White	Black	Hispanic	Asian	2+/ Other
Applications	5,964	4,762	1,151	87	3,267	591	1,317	165	624
Written Exam **	4,949 83%	3,958 83%	927 81%	64 74%	2,809 86%	454 77%	1,057 80%	139 84%	510 82%
Submit personal history***	1,621 27%	1,329 28%	277 24%	15 17%	975 28%	122 21%	297 23%	48 29%	179 29%
Job Suitability, Polygraph, Background	665 11%	546 11%	116 10%	3 3%	413 13%	42 7%	112 9%	18 11%	80 13%
CSC Review, Medical Exam	183 3%	142 3%	40 3.5%	1 1%	109 3%	5 .08%	32 2.4%	5 3%	22 3.5%

* Gender not recorded.

³³⁰ Baltimore Consent Decree Monitoring Team, *First Comprehensive Re-Assessment* (Sept. 30, 2020).

³³¹ Aurora Civil Service Commission, *2020 Overview and Recent Entry Level Hiring*, Presentation to the Public Safety, Courts and Civil Service Policy Committee (Sept. 17, 2020).

**Percentage represents the proportion remaining from those submitting applications.

***Indicates applicant passed the Ergometrics Exam.

Source: *21CP Analysis of CSC Data*.

Once the hiring process is underway, more white applicants successfully proceed through each stage of the selection and hiring process. For instance, close to 35 percent of white applicants proceeded past the written test to submit their personal histories, while approximately 27 percent of Black applicants proceeded to the same stage. About 42 percent of white applicants proceeded through the personal history stage to the job suitability, polygraph, and background stage. About 34 percent of Black applicants proceeded through this stage. While about 26 percent of white applicants proceeded through the job suitability, polygraph, and background stage, approximately 12 percent of Black applicants proceeded through this stage.

21CP recommends that CSC conduct a more in-depth analysis to understand more fully where particular types of candidates may be falling out of the hiring process – and determine whether the hiring process should be modified or amended to ensure more broadly diverse and maximally well-qualified pools of new APD hires. The work under the following, specific recommendations should be conducted in collaboration with the APD, vendors used in the process, and City personnel. As one stakeholder said, “All the entities involved in the hiring process need to sit down and discuss the process and desired outcomes to identify and correct disconnects.”

Recommendation 29.1. The CSC may want to move the physical fitness test further into the hiring process to allow candidates to get into shape and work toward the fitness standards. Additionally, APD should open up academy facilities to interested applicants in regular weekly intervals to begin preparing for the physical fitness test.

21CP understands that, in Aurora, the physical fitness test is the second step in the hiring process, occurring immediately after the acceptance of the application. This differs from what appears to be the current practices in nearby, peer organizations. For instance, Colorado Springs gives the physical abilities test after a conditional offer has been made. In Denver, the physical test occurs after the applicant passes tests, submits the background packet, passes the polygraph, and has interviewed with a psychologist. 21CP understands that “[t]he Civil Service Commission (CSC) conducts the fitness test early as a cost-saving measure.”³³²

A number of cities have found that moving the physical fitness requirement further back in the process, as well as working directly with applicants to help them meet those standards, improved the pass rate. One promising approach is used in Madison, Wisconsin. There, early

³³² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 14.

in the recruiting process, the police department conducts a basic physical screening for each candidate. Then as potential hires progress through the process, the department's training team provides them with hands-on guidance on how to prepare for the state-mandated, entry-level physical ability test based off that exam.³³³

APD told 21CP that it "could consult with Risk Management to discuss the possibility of opening the police facilities to unvetted, not yet employed people."³³⁴ 21CP agrees that this is worth exploration.

Recommendation 29.2. The CSC should closely review how the suitability interview, polygraph, and full background impacts the consideration of a candidate's overall depth of life experience.

For many law enforcement agencies, certain findings in a background investigation became automatic disqualifiers. These have often included financial problems and past drug use. However, in recent years:

[A]s the candidate pool has changed, and as social mores and even some drug laws have evolved over time, agencies have reconsidered some of their traditional thinking about candidates' histories and prior activities. At the same time, agencies have also been forced to re-evaluate some of the tools, such as polygraph exams, voice stress analyzers, and psychological screenings, that they have relied on in the past.³³⁵

As described above, it appears that the phase of the suitability interview, polygraph, and full background is where Black applicants are dropped from consideration more than white and Hispanic/Latino candidates. CSC should further explore what specific factors are causing this rejection rate and assess what changes might be made.

21CP understands that CSC decided to suspend the use of the polygraph examination for the next recruiting cycle. There should be an evaluation of the impact of this suspension on candidate acceptance and the quality of candidate to understand if this and other changes should become permanent.

Recommendation 29.3. The CSC should explore using preference points to attract candidates who are city residents.

³³³ Kevin P. Morrison, *Hiring for the 21st Century Law Enforcement Officer: Challenges, Opportunities, and Strategies for Success* (2017).

³³⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 14.

³³⁵ *Id.* at 13.

Currently, preference points are added to the final passing score of an entry-level applicant who successfully completes the initial testing and prior to being given a position on a Prospective Employment List which is used to fill APD officer vacancies. Preference points are given for military experience, speaking a second language, and having served in a police or fire explorer program. Applicants who are currently police officers elsewhere also get preference points for being POST certified.

The CSC should explore using preference points in additional ways to attract the type of diverse, qualified candidates who have existing ties to and understanding of Aurora. Specifically, CSC should consider awarding points for candidates who live within Aurora. It might also consider providing points to candidates with higher levels of education or other types of prior professional expertise.

Recommendation 30. APD should consider leveraging its lateral hiring program and civilianization efforts to enrich the diversity in the department.

Lateral hires – or hires of existing police officers from other jurisdictions – were somewhat more diverse in terms of race and ethnicity than new recruit hires. Specifically, Black lateral hires accounted for 8 percent of total lateral hires, and lateral hires classified as Hispanic accounted for 6 percent of total lateral hires. Nevertheless, over 86 percent of the lateral applicants are white males.

21CP understands that, by City Charter, up to half of an academy class can be made up of lateral recruits. APD should explore how the lateral program in particular might be used to cultivate academy classes of qualified, diverse hires, which the Department suggests it is already focused on doing.³³⁶ Over the past eighteen months it has become increasingly difficult to attract not only new hires but also lateral hires. Denver, Colorado Springs and other Colorado police departments are competing with Aurora for good officers who are certified in the state and looking to move. There is an additional challenge in attracting out-of-state officers because of the lack clarity of recent legislation. 21CP recognizes these challenges, but, nonetheless, we believe the lateral program is a good way to increase diversity in the ranks of APD.

Hiring officers from other departments involves potential issues and risks that hiring new individuals into the policing profession does not. In particular, lateral hiring involves the possibility of hiring officers with performance, misconduct, or behavioral issues at their prior department. 21CP was told that APD investigators make personal visits to the lateral applicant's former agency. During a site visit, investigators should review the applicant's personnel files and other documents and interview personnel who are knowledgeable about the lateral's background. To the extent that this additional backgrounding of lateral hires is

³³⁶ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 15.

thorough and fair, attracting existing officers to come to Aurora is a promising mechanism to expand and enhance APD's overall diversity.

Recommendation 31. APD should ensure that all members work together toward increasing the diversity of the department.

APD's use of a referral incentive program, as noted above, is good practice that can form the foundation for a Department-wide orientation toward attracting dedicated, high-quality, and diverse members. A department whose philosophy is one of interaction, relationship-building, and partnerships with the public can tap into internal recruitment strategies. Recruitment can become part of the department's everyday interactions with the public, with every APD member becoming a recruiting ambassador. APD should consider adopting formalized mechanisms for further enhancing such internally-driven recruitment among APD personnel across all ranks and assignments. To this end, APD says that its "new Community Relations Section will be able to help formalize some specific strategies."³³⁷

Training

Police training in the twentieth century tended to take the form of static, classroom-based instruction focused on technical skills and legal principles.³³⁸ Training was siloed, redundant, and often limited to that which was necessary to meet state requirements or retain qualification. If new topics were introduced, they were often driven by headlines, lawsuits, or new technologies³³⁹ rather than strategic determinations about professional development. Training was typically provided by in-house instructors, often simply supervisors called in to preside over classroom-based instruction, recycling existing knowledge and beliefs without introducing new ideas and concepts.

Especially over the past few decades, standards and best practices in police training have transformed significantly. Modern police training is built on a foundation of adult learning theory, which, among other things, recognizes that training is most effective when adults are motivated to learn, are treated as equal partners in the learning process, and can connect the instruction to their experiences.³⁴⁰

As part of this shift, there has been an ever-growing focus in policing on using "realistic, scenario-based training," rather than static classroom instruction, "to better manage

³³⁷ *Id.*

³³⁸ See, e.g., David Bradford and Joan E. Pynes, "Police Academy Training: Why Hasn't It Kept Up With Practice?," 2 *Police Quarterly* 283 (1999) (describing historical deficiencies in police training).

³³⁹ See generally Michael Buerger, "Educating and Training the Future Police Officer," 73 *FBI Law Enforcement Bulletin* 26 (2004) (summarizing static nature of law enforcement training).

³⁴⁰ Mark R. McCoy, "Teaching Style and the Application of Adult Learning Principles by Police Instructors," 29 *Policing* 77 (2006); Michael L. Birzer, "The Theory of Andragogy Applied to Police Training," 26 *Policing* 29 (2003).

interactions and minimize force.”³⁴¹ For instance, rather than having officers passively consume a never-ending progression of slides or written material about policy provisions or recent legal cases regarding the use of force, “[o]fficers should practice, in interactive environments” topics like “de-escalation techniques and threat assessment strategies that account for implicit bias in decision-making.”³⁴² In the same way that pilots must continually practice their skills in flight simulators, rather than studying aerodynamics or passively studying checklists of things to do in the event that mechanical issues arise, police officers need to be provided with training programs that allow them to develop skills, practice techniques, and navigate realistic situations so that they can apply lessons learned to their everyday work in the field.

Many of 21CP’s recommendations apply to both academy training, for new hires, and in-service training, for existing APD officers. However, they have particular applicability to in-service training – the type of ongoing professional development that officers should receive throughout their policing careers.

Recommendation 32. APD should overhaul its general approach to training and professional development to focus on integrated, scenario-based training that uses adult learning techniques and focuses on providing opportunities for officers to practice and cultivate real-world skills.

A number of APD officers and supervisors expressed a specific desire for more, and improved, training. One noted simply that “we need more decision-making training, scenario training, and critical event training.” Even as many officers recognize the need for more de-escalation training, “we have this ancient [training] simulator” that does not provide the type of realistic, scenario-based training that many want. Instead, as one officer summarized, “right now, our training is Power Point slides” rather than dynamic, decision-making-based instruction.

Consequently, APD should endeavor to overhaul its overall approach to training to emphasize the development of real-world decision-making skills; the use of a diversity of adult learning techniques; and realistic, scenario-based training opportunities. To this end, “scenarios” do not need to be, and should not be, confined to the use of “shooting simulators” that gained prominence in police departments in the 1990s and 2000s. Instead, “scenarios” can be role-playing exercises, real-world videos or verbal descriptions of situations that officers discuss and analyze, and other sorts of presentations of situations that form the basis for officers to apply APD policy and grow their skills. APD told 21CP in May 2021 that it is now using mock “cities” inhabited with actors to expand the Department’s use of role-playing scenarios and to make such exercises as realistic as possible. It has separately said that “[t]he Academy has recently increased scenario training significantly,” is “in the process of

³⁴¹ *Final Report of the President’s Task Force on 21st Century Policing* 52 (2015).

³⁴² The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 143 (2019).

acquiring a state-of-the-art simulator,” has “changed [the] teaching environment at the Academy to a more adult-based model,” and “[w]ith the easing of COVID restrictions,” expanded the use of scenario-based instruction.³⁴³

Recommendation 33. APD and the City should ensure that APD’s training function has sufficient access to training management platforms and training resources that can promote effective, ongoing officer training and professional development.

APD personnel expressed a number of concerns to 21CP about the existing training infrastructure – including potential issues with the range, driving track, and classrooms. Because of the COVID-19 pandemic, 21CP was not able to spend meaningful time in Aurora to independently assess the suitability of APD’s facilities and infrastructure for training and professional development. Consequently, we recommend that APD and the City conduct an assessment of APD’s current training resources and potential needs, especially as the Department endeavors to transition to an updated training model.

In response to these concerns and this recommendation, APD told 21CP:

APD uses AuroraLearn, an online Learning Management System (LMS) program, to deliver certain types of training. LMS also allows officers to complete external trainings that can be tracked and documented. All sworn officers have access to the online PoliceOne platform and the additional resources that encompasses. With regard to physical resources, track, range, classrooms, these are generally running at full capacity and rarely have availability.³⁴⁴

Recommendation 34. APD needs to establish a comprehensive professional development program for both officers and civilian staff that takes full advantage of both in-house and external resources. Training priorities and needs should be identified in a Professional Development Program Plan that the Department updates regularly with specific objectives, training programs, milestones, and deadlines.

Department personnel say that there are limited professional development opportunities for mid-level personnel. Separately, some civilian staff are required to have a minimum number of training hours to become and maintain their professional certifications. However, this is not always supported by the department. There is also a perception among some APD personnel that the selection process for external training programs is unfair.

³⁴³ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 15.

³⁴⁴ *Id.*

As it re-thinks its general training function, APD should also focus on creating long-term pathways for career and professional development for all personnel. Training imperatives should align with real-world trends and issues, officer career stages, and rank responsibilities. Professional development opportunities can be tailored specifically for Aurora personnel based on the needs and realities of the Aurora community and can be provided through external resources or programs that align with the Department's mission and priorities.

To this end, 21CP recommends that the Department develop a Professional Development Program Plan that identifies particular goals, specific training programs that will be provided to meet those goals, milestones for the Department and its personnel to meet to implement the plan, and deadlines for meeting the various milestones and completing various training initiatives. The purpose of such a Plan is to ensure that APD is not simply providing sporadic, one-off trainings to officers but are, instead, providing a thoughtful, focused professional development arc that builds skills and grows professional competencies. APD has indicated that it “agrees this would benefit all employees.”³⁴⁵

Field Training Officer Supervision, Selection, and Training

Field training is an important part of preparing police officers to effectively carry out their duties and responsibilities. In most programs and departments, new officers participate in the field training program for approximately 12 to 16 weeks following completion of academy training. Those officers start their work in the field under the guidance and supervision of a Field Training Officer (“FTO”) who is generally a senior patrol officer that has been specifically trained for the role.

Most police agencies have modeled their FTO program after one established by the San Jose Police Department in the early 1970s.³⁴⁶ In this model, trainee performance is assessed each day against 30 standards on a defined, five- or seven-point scale.³⁴⁷

A different approach was introduced in 1999 by the Reno, Nevada Police Department that focuses on using adult learning methods and emphasizes problem-solving.³⁴⁸ As noted in the Final Report of President Obama’s Task Force on 21st Century Policing, the “Reno Model,” developed in collaboration with the Department of Justice’s COPS Office and the Police

³⁴⁵ *Id.* at 16.

³⁴⁶ San Jose Police Department, About Us, Organization, Bureau of Field Operations, *Field Training Officer (FTO) Program*, <https://www.sjpd.org/about-us/organization/bureau-of-field-operations/field-training-program> (last visited May 5, 2021).

³⁴⁷ *Id.*

³⁴⁸ U.S. Department of Justice, Office of Community Oriented Policing Services, *A Problem-Based Learning Manual for Training and Evaluating Police Trainees: PTO An Overview and Introduction* (2004), <https://cops.usdoj.gov/RIC/Publications/cops-w0150-pub.pdf>.

Executive Research Forum (“PERF”), “use[s] adult learning theory and problem solving tools to encourage new officers to think with a proactive mindset, enabling the identification of and solution to problems within their communities.”³⁴⁹ The Reno method modifies the San Jose model by focusing the FTO environment on new officers learning about the community challenges and problems officers encounter in the field. The model attempts to ensure that academy graduates’ initial experiences as law enforcement officers reflect policing in the 21st century and reinforce problem-solving and community engagement skills.³⁵⁰

Both the more traditional San Jose model and the newer Reno model are based on the idea that a seasoned officer is the best teacher for an officer who is making the transition from the controlled, structured environment of a training academy to the day-to-day work of an officer in the community. This assumption is valid if and only if a department selects the best officers to be FTOs. If a department does not, new officers may learn poor practices that will stay with them throughout their career.

APD’s Field Training Evaluation Program (“FTEP”) is based on the San Jose Model, with some modifications. FTEP is 7 weeks for lateral entry officers and 14 weeks for entry level officers.³⁵¹ FTOs complete daily observation reports that assess the trainee against 14 performance tasks using a five-point scale. FTOs note in a narrative the most satisfactory and least satisfactory performance of each day.

In Aurora, FTOs are considered “specialists” and receive a 7 percent increase in pay for serving in this role. Despite this elevated pay scale, APD reports that it is having increasing difficulty filling FTO positions.

The FTO program has traditionally been managed by a Sergeant who reports directly to the Operations Division Chief. Eight sergeants supervise the FTOs in the field.

Based on conversations with APD stakeholders in May 2021, 21CP understands that APD is making a number of changes to the FTO program. First, APD is putting a lieutenant in charge over the FTO program, which enables APD to have someone more directly involved on the day-to-day monitoring of FTO performance. Second, through changes to the FTO selection process, APD has sought to clarify expectations about who can serve as FTOs. According to APD, the Department is emphasizing that it wants people aligned with the cultural changes that it is seeking to cement. Third, recognizing that senior officers are often best-positioned to be FTOs, the Department is trying to change scheduling parameters to allow FTOs to enjoy some of the scheduling benefits associated with seniority while still

³⁴⁹ *Final Report of the President’s Task Force on 21st Century Policing* 60 (2015).

³⁵⁰ Margaret A. Fischer, U.S. Department of Justice, International Association of Chiefs of Police, *Best Practice Guide Field Training for Today’s Recruits*, <https://www.theiacp.org/sites/default/files/2018-08/BP-FieldTrainingforTodaysRecruits.pdf> (last accessed May 5, 2021).

³⁵¹ APD Standard Operating Procedure, *Recruit Field Training* (last rev. July 19, 2013).

allowing those individuals to work as FTOs. Fourth, expectations have been clarified about what is necessary to remain within an FTO position. Fifth, APD has been taking steps to increase and enhance the diversity of FTOs. Finally, APD indicates that it is trying to get more FTOs to attend further training more often.

In June 2021, APD clarified the steps it has been taking with respect to the FTO program:

In November of 2020[,] the Field Training and Evaluation Program (FTEP) was moved from the Background and Recruiting Section under one dedicated Lieutenant. This Lieutenant's only responsibility is the FTEP and related certifications and training. This Lieutenant . . . along with the FTEP Sergeants, have worked to completely revamp the program. This Lieutenant reports directly to the Operations Division Chief.

Sub-standard FTO's were removed from the program and numerous new FTO's were brought into the program which also subsequently increased diversity amongst the ranks of FTO's. In 2020, the FTEP program added several additional FTO's to include 4 women, 1 African American, and currently have several FTO's that identify as LGBTQ+.

The FTO selection process has changed dramatically and interviews for new FTO's now consist of a comprehensive selection process. This process includes enhanced interviews by an oral board, which consists of members from each patrol district (captain or commander), a current FTO Sergeant, and the Division Chief of Operations. A copy of the FTO interview questions is attached.

While the Field Training and Evaluation Program standard operating procedure is currently being revised, in early 2021, [the designated Lieutenant] and the FTO Sergeants authored a brand-new manual for training officers, of which a copy is attached.

[The designed Lieutenant] has changed the Remedial Training Plans for recruits and we have seen drastic improvements in the ability of recruits to respond to additional/remedial training, resulting in the successful completion of FTEP, whereas in the past, they may not have succeeded. The Remedial Training Plan document is attached.

In response to concerns of increasing consistency of Field Training, we have updated and enhanced our use of critical task logs and training. In order to ensure consistency through the program, we created the task logs (example provide is from a recently graduated recruit) which direct FTOs to the appropriate Directives, SOPs, and training videos. During each training

session, the FTO is required to complete this training one-on-one with the recruit. This training ensures consistency from the Academy to Field Training, as well as ensuring the training matches current directives and protocols. Notable inclusions in the attached documents are updates to the UOF Policy, Duty to Intervene, and Suspicious Occurrences just to name a few. Each of these logs is linked to take the trainer and trainee directly to the most current policy, as well as provides direction towards talking points and specific items of note.

This task log is set to be evaluated annually and updated to reflect current policy and training.³⁵²

The changes that APD indicates that it has been making recently appear to align with the recommendations that 21CP developed over the course of the assessment. So long as APD meaningfully implements them and reduces them to policies and formal procedures, the quality and effectiveness of the FTO program stands to be enhanced in the future.

Recommendation 35. APD should take steps to ensure FTOs are representative of the diversity of the department and community.

Of APD's 42 current FTOs, all but one are male. Four out of five (79 percent) are white and 17 percent are identified as Hispanic. There are no Black FTOs. The lack of diversity among field training personnel was referenced by several APD stakeholders who spoke with 21CP. It is important for the Department going forward that this function be, in the short-term, at least as diverse as the Department as a whole and, in the intermediate- to longer-term, as diverse as the communities that APD serves.

We note that current FTO officers appear to be relatively experienced, with nearly three-quarters (74 percent) of FTOs having more than five years of service.

Recommendation 36. The Field Training Standard Operating Procedure should be updated to reflect changes made in 2020 to the FTO selection process and enhanced to provide more specific guidance on the overall program, the process by which APD members qualify and are selected to be FTOs, how the program proceeds, and how FTOs are evaluated.

APD's field training Standard Operating Procedure ("SOP") was last updated on July 19, 2013. Based on conversations with APD stakeholders, we understand that the FTO selection process was changed in 2020. However, this is not reflected in the current SOP reviewed by 21CP. APD should codify recent changes to the FTO program in its SOPs and policies.

³⁵² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 16–17.

Additionally, the current SOP does not adequately explain the FTO evaluation process. We also recommend that APD expand the coverage of evaluation considerations in its SOPs and policies going forward.

Recommendation 37. The APD should re-evaluate its FTO evaluation process to ensure consistency and effectiveness.

The average rating given by FTOs for APD’s 203 basic trainees 2018 through November 2020 was 2.70 – which is below the rating of 3 identified by APD as “acceptable.” This suggests that the average rating for trainees in the FTO program was less than “acceptable.” When staff was asked about this, 21CP was told:

They always average out below a “3 acceptable” over the program as a whole. In the first phase, trainees being new, get a lot of 1s and 2s and a few 3s or higher. In the second phase as they get exposure and learn the job, they get a few 1s, but mostly 2s and some 3s or higher. In the third phase and test out, they pretty much function on their own and will be getting an occasional 1 or two (due to an occasional bad call or random learning mistake which we all still make), but mostly their scores are at the acceptable range of 3s or higher. Our software only allows us to pull the average score.

However, during 21CP’s review, it appears that the 14 performance tasks on which FTOs rate students each day may not be as well-defined and uniformly understood as they should be – such that varying or poorly understood standards could be part of the reason for the low ratings.

APD data on basic *and* lateral entry officers over a five-year period (2015 to 2020) indicates that 30 (11 percent) of the 268 trainees failed the FTO training and were separated from the department. In addition, some one-quarter of trainees (24 percent) had their training time extended so that they could more satisfactorily demonstrate acceptable performance. Over one-third of Hispanic male trainees had their training time extended; approximately 14 percent failed to satisfactorily complete the program. Fourteen percent of the Black males were also separated from the department for failure to complete the program. About 22 percent of the White saw their training time extended and 12 percent were separated.

For comparison, San Jose Police Department’s goal for their FTO program is a 90 percent success rate. There is considerable cost to the City and the Department to lose an officer at their final stage of training – after the individual has spent substantial time in proceeding through the training academy. Although 21CP is in no way suggesting that APD retain poorly performing officers, a review of the reasons for the relatively high rates of training extension and separation rates should be explored.

Early Intervention & Peer Support

Policing is a stressful and unpredictable profession. Officers frequently respond to the scene of situations that others have not been able to address themselves – and to resolve situations in which people are often at their worst or most vulnerable.

When compared with the general population, police officers report “higher rates of depression, PTSD, burnout and other anxiety related mental health conditions.”³⁵³ In 2016, more officers died of suicide than any single cause of death.³⁵⁴

Ongoing stress and trauma affect not just officers but their families and, indeed, the communities that they serve. Mental and physical health challenges often result in increased administrative costs from absenteeism, increased use of workers’ compensation and sick days, and more frequent use of early retirement. Likewise, “[w]hen exhausted, officers are unable to effectively communicate with community members and may even incite agitation among them.”³⁵⁵ In contrast, “[o]fficers who are equipped to handle stress at work and at home . . . are more likely to make better decisions on the job and have positive interactions with community members.”³⁵⁶

Given the importance of officer wellness, President Obama’s Task Force on 21st Century Policing recommended:

Support for wellness and safety should permeate all practices and be expressed through changes in procedures, requirements, attitudes, and behaviors. An agency or work environment in which officers do not feel they are respected, supported, or treated fairly is one of the most common sources of stress. And research indicates that officers who feel respected by their supervisors are more likely to accept and voluntarily comply with departmental policies. This transformation should also overturn the tradition of silence on psychological problems, encouraging officers to seek help without concern about negative consequences.³⁵⁷

³⁵³ National Alliance of Mental Illness, *Law Enforcement*, https://www.nami.org/Advocacy/Crisis-Intervention/Law-Enforcement?gclid=CjwKCAiA6aSABhApEiwA6Cbm_2sKB-oajSH3XdC9c5ZGyS8VdbOcLHL5GnUs3nJ9MOvbUeEZjBS5CBoCqI8QAvD_BwE (last visited May 5, 2021).

³⁵⁴ John M. Volanti, et al, “Law Enforcement Suicide: A National Analysis,” 15 *Int’l J. Emergency Mental Health & Human Resilience* 289, 289 (2013).

³⁵⁵ Police Executive Research Forum, *Building and Sustaining an Officer Wellness Program: Lessons from the San Diego Police Department* 7 (2018).

³⁵⁶ The Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 312 (2019).

³⁵⁷ *Final Report of the President’s Task Force on 21st Century Policing* 62 (2015).

Officer wellness can be supported through a variety of mechanisms within a police organization:

There is clearly a continuum of mental health and wellness strategies, programs . . . that begins with recruitment and hiring and goes through retirement. It includes proactive prevention and resiliency building; early interventions; critical incident response; treatment, reintegration; and ongoing support for officers, staff members, and their families.³⁵⁸

Peer Support

One mechanism for officer support is a peer support program. APD's Peer Support Program was established in 2009.³⁵⁹ The Employee Support and Wellness Unit ("ESWU") coordinates the program, which is supervised by a psychological services clinician who assists in the selection and training of peer support advisors and provides consultation services.³⁶⁰

Peer support advisors are used in a wide variety of personal or professional crisis situations, which range from providing support when officers are involved in a shooting incident to officers facing marital or financial challenges.

To serve as a peer support advisor, employees must have at least three years of service and submit a letter of interest to the coordinator explaining their interest and qualifications. Candidates appear before an interview panel comprised of the psychological services clinician, the program coordinator, and two current peer support advisors. The panel recommends candidates to the Chief of Police for final approval. After selection, new advisors participate in a 40-hour basic peer support training program.

The Peer Support Program appears to be an active group. Those working with the program recorded 913 contacts, or 2.5 per day in 2019.³⁶¹ A total of 528 contacts were made by sworn officers (including 55 from outside agencies). In 2020, the number of contacts increased by 23 percent to 1,122. Fifty-five percent (621) of the 2020 contacts were from sworn officers, with nearly one-third (342) of contacts involving stress/fatigue issues.³⁶² Indeed, the most frequent reason for contact with peer support in 2020 was career stress (27 percent of

³⁵⁸ 21CP Solutions, U.S. Department of Justice, Office of Community Oriented Policing Services, *Law Enforcement Mental Health and Wellness Programs: Eleven Case Studies* (2019), <https://cops.usdoj.gov/RIC/Publications/cops-p371-pub.pdf>.

³⁵⁹ APD Directive 8.35.

³⁶⁰ *Id.*

³⁶¹ Measuring workload is a challenge for all peer support programs, as not necessarily all contacts are documented. 2019 Data was provided by the ESWU on December 2, 2020, with limited data for 2020 provided on January 26, 2021.

³⁶² The remaining 45 percent that did not originate with sworn officers came from non-sworn personnel, officer family members, and other individuals or stakeholders outside APD.

encounters). One-quarter (24 percent) involved supervisor or discipline/Internal Affairs issues. Fourteen percent of the contacts involved marital relationships and 11 percent involved alcohol. Twenty-three contacts were related to suicide attempts. Ultimately, the number of contacts and the range of issues suggests the peer support team has earned the trust of a significant number of employees in the department, which is not necessarily the case in similar programs in other departments. APD should be commended for establishing a program that officers appear to find value in using.

APD personnel told us that APD is a client of an employee wellness organization in which a former APD Chief and former APD psychologist are involved. In our interviews, some officers expressed concern about these dynamics, with one summarizing, “This is problematic because officers do not feel there is confidentiality when former APD members are employed by” the outside firm.

Early Intervention

Another mechanism for officer support is one in which concerns about officer wellness and performance accountability can merge. Police departments and the communities that they serve have a strong interest in establishing mechanisms to identify potential performance issues before they become significant, result in misconduct, or produce bad outcomes – so that departments can proactively intervene to address issues that may be impacting the quality of an officer’s performance.

This approach is known as an Early Intervention System (“EIS”). Grounded in “basic principles of personnel management and human resource development that have developed in the private sector,” an EIS provides a means and process for supervisors to “identify[] officers with potential behavioral problems” that can benefit from proactive intervention.³⁶³ “The ideal purpose of an EIS is to provide officers with resources and tools in order to prevent disciplinary action, and to promote officer safety, satisfaction and wellness.”³⁶⁴

Police departments began developing early intervention systems (“EIS”) in the 1970s, with research suggesting that a small number of officers tend to be responsible for a significant proportion of citizen complaints and uses of force. By 2007, nearly two-thirds (65 percent) of

³⁶³ Geoffrey P. Alpert & Samuel Walker, “Police Accountability and Early Warning Systems: Developing Policies and Programs,” 2 *Justice Research & Policy* 59, 61 (2000).

³⁶⁴ Karen L. Amendola and Ronald C. Davis, National Police Foundation, *Best Practices in Early Intervention System Implementation and Use in Law Enforcement Agencies* (Mar. 2019), https://www.policefoundation.org/publication/best-practices-in-early-intervention-system-implementation-and-use-in-law-enforcement-agencies/?gclid=Cj0KCQiAw_H-BRD-ARIsALQE_2NhWMKF-4jCLw69DL0nywU-pW84-Xb5jXAlgbNo5zT4h0JTnk1n-v8aAsthEALw_wcB.

American police departments with over 250 officers had some form of early intervention system.³⁶⁵

The APD implemented its Personnel Early Intervention System (“PEIS”) in November 2002.³⁶⁶ APD Directive 8.35 describes PEIS, provides procedures, and identifies the various performance risk factors considered. Specifically, the Directive lists 31 performance risk factors that are considered in flagging an officer for potential intervention. The Directive outlines a point system that assigns points to individual risk factors, ranging from 1 to 10. Some risk factors like substance abuse, being arrested or making a false arrest are assigned 10 points. The risk criteria are populated from within the Administrative Investigations Management (“AIM”) system, the CAD system, a scheduling system, and by supervisory entry.

An officer that reaches 10 points within a 12-month period is flagged for intervention. Supervisors may also initiate an intervention without an accumulation of 10 points within a year. A supervisor may be aware, for example, of an employee having a difficult time going through a divorce so an intervention can be made to provide options for assistance. In 2019, there were three supervisory interventions which resulted in one referral to Internal Affairs, one referral to peer support, and one referral to training.³⁶⁷

PEIS is automated. The department acquired the AIM software platform from On Target Performance in 2010, and it was operational in 2011. Several APD stakeholders told 21CP that the AIM software is not user-friendly and has not changed in the past ten years. 21CP understands that the Department has been looking for an alternative for about two years.

Between 2018 and September 22, 2020, there was a total of 404 flags, with 87 percent requiring no further action. The remaining 13 percent resulted in some type of intervention with three-quarters (76 percent) of the recommended interventions being counseling.

Recommendation 38. The Peer Support Team should consist of officers who reflect diverse backgrounds.

APD’s Peer Support Team current has 42 members. The team is a mix of Sworn (31) and non-sworn (11) employees. Of the membership, 11 have 3-8 years on, 9 have 9-14 years on, 11 have 15-19 years on, 11 have 20+ years of service.³⁶⁸ Most are male (69 percent) and white (78 percent). Although not noted statistically, several members identify as LGBTQ+.

³⁶⁵ J. Helsby, et al, “Early Intervention Systems: Predicting Adverse Interactions Between Police and the Public,” 29 *Criminal Justice Policy Review* 190 (2018).

³⁶⁶ APD Directive 8.35.

³⁶⁷ APD, *Annual Report: Personnel Early Intervention System 2019*.

³⁶⁸ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 17–18.

according to Chief Wilson. There are no Black individuals serving as part of the Peer Support Team. One participant remarked that, in their experience, the Peer Support program is “a bit cliquy.” APD should continue their efforts to expand diversity in the program making it more broadly helpful to officers of diverse backgrounds.

Recommendation 39. The APD should evaluate and analyze its current threshold-based, risk analysis early intervention system (“EIS”) and make changes to enhance its effectiveness. APD should make changes in policy, procedure, practice, and technology infrastructure to permit the implementation of an enhanced EIS.

In recent years, the efficacy of the traditional EIS model has been called into question, with a growing body of empirical research suggesting that the model is ineffective at consistently identifying the right officers for intervention and is significantly inefficient for departments.³⁶⁹ EIS systems too often are either over-inclusive, requiring supervisors to continually evaluate large numbers of officers who reach the defined triggering points and overwhelm the process, or under-inclusive, triggering too few officers or triggering officers along the wrong dimensions. Whether a system results in too many, too few, or the wrong officers triggering the system, any of these errors risk a department not identifying officers with genuinely problematic trends that might be addressed through intervention, thereby usurping the purpose of an EIS.

As it currently functions, APD’s PEIS is potentially over-inclusive. During the period from January 2018 to September 22, 2020, the Personal Early Intervention System (“PEIS”) flagged 404 officers, and 87 percent of the flags may be considered false positives where no further action was needed. Thus, the system may be flagging individuals for attention who are not exhibiting performance issues.

APD reported that there were fifty instances in which PEIS failed to provide the expected alerts on employees who reached the ten-point threshold because of a vendor-initiated maintenance action earlier in the year.³⁷⁰ 21CP understands that APD is in the process of implementing a new platform, Benchmark Analytics’ Benchmark Management System (BMS), to help facilitate and strengthen their early intervention system, which they believe “will allow for greater flexibility in assigning data points to enhance effectiveness.”³⁷¹

³⁶⁹ University of Chicago Crime Lab, *The Officer Support System: Developing a Data Driven Early Intervention System in Chicago* (Feb. 26, 2019); Stephen James, Lois James and Liz Dotson, “Evaluating the Effectiveness of a Police Department’s Early Intervention System, James, James, and Dotson,” *Journal of Experimental Criminology* (Feb. 7, 2020); Joel Rubin, “Report Questions LAPD Program to Flag Misconduct,” *L.A. Times* (Aug. 25, 2016).

³⁷⁰ Aurora Police Department, *Annual Report: Personnel Early Intervention System 2019*.

³⁷¹ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 18.

AREA 5. ACCOUNTABILITY

Officer Misconduct & Complaints

Public trust in the police depends in part upon a department's degree of transparency and the presence of procedurally just mechanisms that hold line officers and agency leadership accountable for complying with law, policies, and the agency's sanctioned protocols and practices. Among many other things, accountability requires the routine documentation and public dissemination of **officer** and agency actions and outcomes, including the resolution of citizen complaints, open and honest communications with victims of both community and police violence, and transparency surrounding corrective and punitive actions taken in response to instances of officer misconduct.

Recommendation 40. APD should work in collaboration with community, city administration (including City Human Resources), police officer organizations, and the Civil Service Commission to re-align the entire system of handling complaints, investigations, and disciplinary decisions to comport with the principles of procedural justice and to ensure the fair, objective, thorough, and timely investigation of all allegations of potential officer misconduct. Consistent with these objectives and as part of this process, APD should re-draft and replace its current directives, and/or related policy and manual guidance, on administrative investigations, complaint investigations, Internal Affairs investigations, and any other investigations relating to officer misconduct.

APD officers, third-party reviewers, and many community members all believe that the current system for addressing potential officer misconduct in Aurora is broken, cumbersome, and ineffective in promoting a culture of accountability with the Department.

During interviews and focus groups, many officers with various ranks and years of service expressed the perception that APD's disciplinary system is generally unfair. Some officers cited instances where it appeared that different officers received different treatment in terms of investigative rigor and penalty for the same alleged offense. Additionally, with near unanimity, officers expressed a lack of trust in the current system and a belief that officers are treated more or less harshly based upon media coverage and public sentiment rather than the seriousness of the alleged misconduct or the actual cause for discipline.

Many of the personnel interviewed cited cases where officers received discipline which was not consistent with CRB and/or IRB recommendations as examples of disparate treatment. Some officers also cited cases where minority officers received different treatment than Caucasian officers in light of when, what, and how the investigation was conducted.

Similarly, community members and elected officials expressed a general lack of trust in the disciplinary system. There was a perception among community members, similar to that of officers outlined above, regarding the appearance of disparate treatment of officers based on race.

21CP requested and examined aggregate data on officer misconduct investigations. Between 2017 and 2020, there were 171 APD officers with at least one allegation of misconduct, accounting for a total of 478 total allegations.

A relatively concentrated number of officers account for a disproportionately large share of misconduct cases (or individual investigations) and allegations (akin to charges or specific types of misconduct infractions investigated within the context of individual investigations). Specifically, there were 35 officers – 20 percent of all officers with least one misconduct allegation – who accounted for 40 percent of misconduct cases. Indeed, just 12 officers – 7 percent of officers with at least one misconduct allegation – accounted for 19 percent of misconduct cases between 2017 and 2020. Expanding slightly outward to the level of allegations, only about 32 officers accounted for 44 percent of misconduct allegations, and 12 officers accounted for nearly one-quarter (24 percent) of allegations.

As Table 19 indicates, most misconduct allegations, findings, and actions taken involve white male officers, so discrepancies between demographic groups may reflect a low number of misconduct cases involving non-white officers. Black officers were somewhat more likely to have allegations of misconduct than white officers relative to their size within APD. White male officers made up 66% of all cases and allegations but they are 70% of officers within APD. Black male officers are 3.3% of APD officers but received 7% of misconduct allegations, while Black female officers make up fewer than 1 percent of APD’s total officers but made up over 4 percent of all allegations between 2017 and 2020.

Table 19. APD Misconduct Allegations by Officer Race and Gender, 2017 – 2020

Gender	% of Cases	% of Allegations	% of Officers
White Male	65.8%	66.1%	69.6%
Black Male	6.2%	7.3%	3.3%
Hispanic Male	6.7%	5.4%	8.8%
Two or more Races Male	3.6%	2.7%	3.1%
Asian Male	1.8%	1.5%	1.8%
White Female	8.9%	9.0%	9.6%
Black Female	3.6%	4.4%	0.8%
Hispanic Female	2.2%	2.1%	1.4%
Two or more Races Female	0.9%	1.0%	0.8%

Asian Female	0.4%	0.4%	0.1%
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Source: 21CP Analysis of APD Data.

Allegations against female officers were less likely to be sustained than allegations against male officers, with nearly 48 percent of allegations against female officers receiving a finding of exonerated, not sustained, or unfounded compared to 38 percent of male officers.

Table 20. Misconduct Investigation Outcomes/Findings by Officer Race and Gender, 2017 – 2020

	Sustained	Exonerated	Not Sustained	Unfounded	Policy Failure	Resignation in Lieu	% Not Sustained
White Male	187	4	120	1	1	3	39.6%
Black Male	22	1	11	0	1	0	34.3%
Hispanic Male	18	0	8	0	0	0	30.8%
White Female	22	0	16	3	1	0	45.2%
Black Female	9	0	10	2	0	0	57.1%

Source: 21CP Analysis of APD Data.

Ultimately, the byzantine and convoluted nature of APD’s current discipline system – involving various tracks, review boards, and adjudication levels – does not seem to be inspiring confidence, neither within the community nor the Department, in the fairness of process or outcomes of the misconduct process. Figure 4, provided to 21CP by APD, shows the complexity of the current disciplinary system.

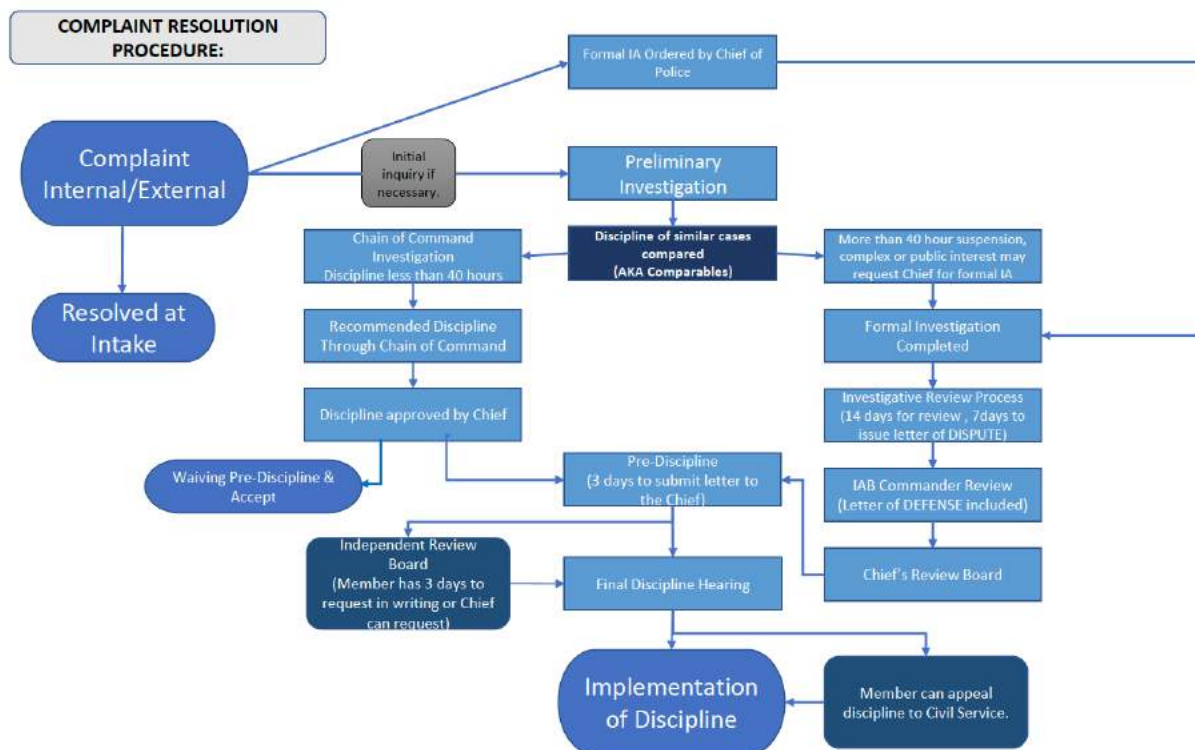
Some of the complex processes and steps embedded within APD’s disciplinary process include the following:

- “All complaints will generally start with the named member's immediate supervisor; however, any supervisor may receive and conduct an initial inquiry into a complaint. Additionally, if the supervisor believes the alleged conduct is such that it may result in discipline beyond a 40-hour suspension, or bring the agency into disrepute, the supervisor may forward the complaint directly to IAB for review and determination.”³⁷²
- “An initial inquiry is designed to gather necessary facts and information concerning the allegation, to determine if any law, ordinance, directive, standard operating

³⁷² APD Directive 10.02, Section 10.2.5.

procedure, or other city policy may have been violated or a potential for a policy failure exists.”³⁷³

Figure 4. APD Discipline System



Source: APD

- If, through the “initial inquiry” process *or* on the “face” of the complaint “it appears there is a violation which[,] if sustained, would result in discipline greater than a written reprimand, the supervisor will serve a Notice of Investigation” and a Preliminary Administrative Investigation will commence.³⁷⁴
 - If, at the conclusion of the preliminary investigation, the investigator believes the allegation cannot be handled at the District/Bureau/Section level, or believes the final discipline could be greater than a forty-hour suspension, the case is forwarded or tracked, with an entry requesting that the case be investigated by the IAB, through the chain of command to the subjects’ commander or equivalent rank in the complaint management system. The commander or equivalent position in the chain-of-command makes the determination as to whether an investigation should be concluded by the Internal Affairs Bureau or at the district/bureau/section level.³⁷⁵

³⁷³ *Id.*

³⁷⁴ *Id.*

³⁷⁵ APD Directive 10.02, Section 10.2.6.

- The Chief, or designee, may assign the investigation to any member or appropriate outside entity should the Chief or designee decide *not* to have IAB investigate an allegation.³⁷⁶
- The Investigative Review Process (“IRP”) occurs at the conclusion of the IAB investigation and prior to the IAB report being sent to the IAB Commanding Officer for recommendations.
 - The member who is the subject of the investigation has fourteen (14) calendar days to review the report and make note of any issues in dispute. However, this fourteen-day review period may be reduced or extended by mutual agreement.³⁷⁷
- The Chief’s Review Board (“CRB”) reviews the case, discusses the recommendation of finding from the IAB Commander, and decides among the following potential outcomes or next steps:
 - Send the case back to IAB for more investigation;
 - Accept, reject, or modify some, all, or none of the recommended findings of the IAB Commander.
 - Recommend a post-CRB accelerated disciplinary process :
 - A finding of a sustained violation
 - A recommended discipline of no more than a 40-hour suspension
 - If the CRB determines a finding of sustained for any allegation of misconduct, or noncompliance for any compliance review, the CRB will make a recommendation of discipline to the Chief of Police.³⁷⁸
- Prior to the imposition of any discipline other than a reprimand, the member must be provided with a pre-disciplinary hearing before the Chief or a designee.³⁷⁹
- In many instances, an appeal process, with multiple stages or steps, starts after the Chief or designee’s discipline determination.³⁸⁰

In short, the route that potential misconduct may take within the APD to be investigated or adjudicated, and for corrective action to be determined where appropriate, has been convoluted, opaque, and needlessly complicated. Regardless of the reasons why such a complex system has evolved in Aurora, APD personnel and the Aurora community would likely both benefit from a more streamlined, uniform system designed with the goal of

³⁷⁶ APD Directive 10.02, Section 10.2.10.

³⁷⁷ APD Directive 10.02, Section 10.2.11.

³⁷⁸ APD Directive 10.02, Section 10.2.13.

³⁷⁹ APD Directive 10.02, Section 10.2.14.

³⁸⁰ APD Directive 10.2, Section 10.2.17 (cross-referencing to APD Directive 10.5).

conducting fair, thorough, complete, and timely investigations of all allegations of potential officer misconduct.

We observe that the leadership of any police department must examine how its process for investigating and adjudicating misconduct of all types can incorporate and embody procedural justice. As discussed further below, procedural justice refers to the way that decisions are made, how such decisions are communicated, and how they are implemented. It requires that decisions be neutral, based on fact, and consistent with the nature of underlying conduct. When community members and officers alike believe problems will be resolved fairly, equitably, and honestly, they will have greater confidence in the decision and outcome. Employers must therefore create and follow procedures and policies that embody procedural justice, ensuring the response will be fair and consistent regardless of who is involved in the situation.

In response to this recommendation, APD says that it:

[A]grees that there are multiple components related to this recommendation and we are currently evaluating our internal processes related to complaints and discipline. Recommendations provided in this report will assist with that endeavor.³⁸¹

Recommendation 40.1. Complaint and discipline procedures should be codified in separate directives with an emphasis on enhanced clarity.

At the time of 21CP's assessment, APD's Complaint and Discipline Procedures policy, which pertains to "all allegations of misconduct except that complaints determined to be related to internal discrimination or harassment,"³⁸² was 32 pages long.³⁸³ Specifically, Directive 10.02 addresses issues and procedures regarding:

- Complaint processing;
- Complaint investigations;
- The rights of accused officers under investigation;
- The process of determining discipline;
- The discipline appeals process;
- Records maintenance; and
- Statutory reporting requirements.

³⁸¹ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 18.

³⁸² Allegations related to internal discrimination and harassment are covered in a separate APD Directive 10.9 and allegations which imply "potential criminal conduct" are also governed by a separate Directive (10.10).

³⁸³ APD Directive 10.02.

The conglomeration of these topics in the same Directive is confusing and unclear for officers, including some supervisors, community stakeholders, elected officials, and even some members of the Civil Service Commission³⁸⁴ with whom we spoke.

Accordingly, 21CP recommends that the APD reconfigure this policy³⁸⁵ into separate policies regarding (1) Complaint Processing, (2) Investigations, and (3) Dispositions. In June 2021, APD told 21CP that “[r]evision of Directive 10.2 Complaint and Discipline Procedures for Sworn has eliminated some practices (NDSA, Accelerated discipline, etc.) and provided more clarity.”³⁸⁶ 21CP has not had an opportunity to meaningfully review the latest version of the policy, revised May 19, 2020.³⁸⁷

Recommendation 40.2. The current process for handling external complaints should be streamlined. Currently, it is convoluted and substantially more complex than it should be. Policies relating to administrative investigations and external complaints should be consolidated.

21CP recommends that APD use a streamlined, simplified process for adjudicating all instances of potential officer misconduct – whether that potential misconduct is identified internally (by a supervisor or another officer) or externally (by a member of the public). Whether complaints originate within the Department or outside of the Department, the specific processes of investigating the performance related to the complaint, reaching a finding based on the investigation, and imposing discipline as appropriate should be uniform and consistent.

Recommendation 40.3. Allegations of misconduct against employees that may result in discipline or other corrective actions should be identified and categorized by the severity of rule, policy, practice violation in the rewritten directive.

A number of agencies have incorporated the use of a “discipline matrix” as a means of providing fair notice to officers and the community about the expected disciplinary ramifications of

³⁸⁴ Pursuant to the Aurora City Charter, the Civil Service Commission is the final level of review (or appeal) for disciplinary decisions related to sworn police department employees.

³⁸⁵ It should be noted that at the time of our review 21CP was informed that APD was attempting to “clean up” this policy and that specifically Section 10.2.23 – Post CRB accelerated discipline process and Section 10-2-14 – Negotiated Disciplinary Settlement Agreement Process would both be removed.

³⁸⁶ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 18.

³⁸⁷ APD Directive 10.02.

specific classes or types of misconduct or deficient performance.³⁸⁸ As of a 2015 study, some 37 percent of responding police agencies used, or planned to use, matrices, with a higher rate of use in larger jurisdictions.³⁸⁹

A discipline matrix is a formal schedule for disciplinary actions, specifying both the presumptive action to be taken for each type of misconduct and any adjustment to be made based on an officer's previous disciplinary record.

The primary purpose of a discipline matrix is to achieve consistency in discipline: to eliminate disparities and ensure that officers who have been found to have committed similar forms of misconduct will receive similar discipline.³⁹⁰

A matrix helps to establish, "in advance, the most appropriate penalty for common forms of misconduct" and to ensure that individuals "committing the same act[s] of delinquency will receive equal punishment[s]."³⁹¹ To do so, it establishes certain classes of misconduct allegations and detailing the particular ranges of discipline outcomes that are associated with sustained allegations of specific types. Various complaints of potential misconduct are therefore rigorously categorized into a pre-set universe of allegation types.

While the adoption of a matrix can support the overall integration of procedural justice into an agency's disciplinary process, it is not a panacea and can create troubling procedural and outcome results if it does not allow for some amount of flexibility to reflect unusual or unforeseen circumstances. Because it is practically impossible for any discipline matrix to outline, in advance, every possible misconduct scenario or type of performance issues, a matrix must be combined with fair and procedurally just mechanisms for (1) the Department to classify types of misconduct or performance that do not meet the definition of defined categories or classes of misconduct a matrix, and (2) supervisors to consider aggravating and mitigating factors during the course of discipline decisions.

Accordingly, the APD should work closely with external stakeholders, including community, officers, the police union, Aurora's Human Resources function, the Civil Service Commission, and others, to fashion a procedurally just, transparent, efficient, and fair disciplinary process.

³⁸⁸ Jon Shane, "Police Employee Disciplinary Matrix an Emerging Concept," 15 *Police Quarterly* 62 (2012).

³⁸⁹ Christopher J. Harris, et al, "The Prevalence and Content of Police Discipline Matrices," 38 *Policing* 788 (2015).

³⁹⁰ Sam Walker, *The Discipline Matrix: An Effective Police Accountability Tool?*, Conference Report, University of Nebraska (2004); *quoted in* Darrel W. Stephens, National Institute of Justice, "Police Discipline: A Case for Change" (June 2011) at 10, <https://www.ncjrs.gov/pdffiles1/nij/234052.pdf>.

³⁹¹ Richard R. Johnson & Matt Nolan, Federal Bureau of Investigation, "Making Discipline Stick Beyond Arbitrator Review," *Law Enforcement Bulletin* (Dec. 9, 2019), <https://leb.fbi.gov/articles/featured-articles/making-discipline-stick-beyond-arbitrator-review>.

In response to this recommendation, the Department told 21CP that “[a] discipline matrix has been explored in the past” but that “[a] dedicated matrix would create troubling procedural and outcome results if it does not allow for some amount of flexibility to reflect unusual or unforeseen circumstances.”³⁹² 21CP agrees that a matrix needs to allow the Department to weigh aggravating and mitigating factors specific to the circumstances of each particular instance, and it has confidence that APD and the City could fashion a fair and transparent matrix that does so.

Recommendation 40.4. APD’s policy should clearly identify types of allegations to be investigated by first-line supervisors (typically lower-level misconduct) and the types of allegations that will be investigated by Internal Affairs (typically serious misconduct). Wherever a first-line supervisor conducts an investigation, the allegation of misconduct should be reported to the complaints management system, as it is done currently and the Internal Affairs to ensure centralized supervision and administration of all misconduct complaints, allegations, and investigations. Internal Affairs should become the administrative hub of all inquiries into allegations relating to officer performance.

Generally, “all complaints made by members of the public and all internal complaints of a serious nature . . . must be investigated. . . The rules and procedures for an [internal affairs] investigation must be framed to ensure its integrity, thoroughness, and fairness.”³⁹³ Although APD’s current Directive 10.2 appears to identify the types of allegations to be investigated by first-line supervisors, based generally around conduct that if sustained would be more or less significant than a 40-hour suspension, a more detailed categorization scheme for purposes of intake and assignment may be useful to the Department going forward.

Recommendation 40.5. The investigation and disciplinary process directive should include reasonable timelines for the conclusion of the investigation and the adjudication of findings.

There was widespread agreement among various stakeholders that the process for investigating and adjudicating misconduct complaints takes too long. Officers who had been investigated, regardless of outcome, expressed frustration with the length of time their case was “under investigation.” Some officer felt that they were “on the bubble” for several months unsure about the outcome or what, if any, discipline could follow. There was also uncertainty about what type of process would apply if a “sustained” finding occurred.

³⁹² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 19.

³⁹³ United States Department of Justice, *Office of Community Oriented Policing Services, Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 27 (2008), <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>.

Even officers that have never been investigated appeared to resent the treatment of their peers and the added stress prolonged investigations had on their working conditions. Some officers cited prolonged disciplinary investigation and appeal processes as a cause for lower staffing due to officers being on leave while the investigation was pending.

Supervisors also expressed great frustration about the length of the entire process. One supervisor noted that an officer he supervised did not immediately remember what the conduct was when they were served discipline:

It makes no sense . . . An officer can have discipline pending for several months. Meanwhile, the officer is continuing to work with a chip on their shoulder. The process pisses them off and it takes a long time for them to get past it. Some never do. They either quit and go work somewhere else or spend the rest of their career here and they stay bitter about it – even if it’s for something relatively minor.

Meanwhile, community stakeholders, including residents that had made complaints against officers, also expressed frustration with the length of time it took the department to reach a finding or disposition on complaints. Many interpreted long periods of silence regarding the disposition of their complaints to mean that nothing was happening, that their complaints were being intentionally ignored, or that the APD was covering up misconduct. This caused them to question the legitimacy of the department and its work. In other words, the inefficiency of the current process seriously undermines the credibility of the process and the overall department in the eyes of community members. Notably, this view was also echoed by a number of Aurora’s elected officials.

The views of officers, community members, and elected officials appear to be supported by APD data. Between 2017 and 2020, misconduct investigations took just over 200 days on average (measured from the day of the misconduct allegation to the day that the investigation was closed) – or nearly seven months. Nearly one out of ten (8 percent) of cases took in excess of a year to close.

Cases involving white officers were closed slightly faster than average, while cases involving Black officers or officers with two or more races took longer on average to close. However, this discrepancy appears likely to be largely driven by a single case that occurred in 2019, in which the investigation of two female officers took 644 days to close. Both the average and median time to closures is largely consistent regardless of the officer’s race.

Table 21. Length of Officer Misconduct Investigation, 2017 – 2020

Race	Average	Median	Cases
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White	196.8	182	168
Hispanic	200.8	181	20
Black	224.3	155.5	22
Two or more Races	223.0	225.5	10
Asian	202.6	163	5
Overall	201.1	179	225

Source: 21CP Analysis of APD Data.

An action was taken against an officer in 60 percent of misconduct complaint allegations between 2017 and 2020. Black officers were far more likely to receive a suspension as an action taken relative to other demographic groups. Black officers received a suspension in response to 58% percent of allegations where an action was taken, compared to a suspension in 38 percent of actions involving all other officers. Conversely, Black officers received a written reprimand in 6 percent of actions taken compared to 19 percent for all other officers. Further analysis of individual cases would be needed to determine the cause of these discrepancies.

Table 22. Corrective Action for Sustained Misconduct Investigations, 2017 – 2020

Action	White	Black	Hispanic	2 or More Races	Asian	Total
Suspension	84	18	8	5	0	115
Written Reprimand	39	2	6	2	1	50
Resignation prior to discipline	38	7	2	0	2	49
Termination	15	1	2	4	0	22
Corrective Action	15	1	3	0	1	20
Resignation in lieu of termination	15	1	2	1	0	19
Final	2	0	0	1	1	4
PAE – Negative	3	0	1	0	0	3
Fine	1	1	0	0	0	2

Source: 21CP Analysis of APD Data.

21CP recommends that APD revise its directives to articulate clear investigative timelines that promote the comprehensive but timely investigation of all allegations of potential officer misconduct. The Department and City will need to work to ensure that the Department's internal accountability functions, including Internal Affairs, are staffed and supported in a manner that allows for the adherence to definitive investigation timelines.

In response to this recommendation, APD notes:

The timeline example used by 21CP reflects extended timelines from the previous administration. Since the change of administration, investigations are taking considerably less time. Additionally, the duration of some Investigations are extended due to outside factors such as criminal investigations that precede administration investigations.³⁹⁴

Recommendation 40.6. The current IRB and CRB structures should be evaluated and either modified to ensure that they contribute value toward ensuring objective, fair, thorough, and timely investigations or be replaced with a streamlined process that does.

It appears, based on a variety of discussions with departmental, City, and community stakeholders, that APD's IRB and CRB, in their current forms, provide little value. In the context of the system that was operational during 21CP's engagement, the Chief's Review Board ("CRB") consists of the Deputy Chief of Police, who acts as the Chair of the Board, the Internal Affairs Bureau, the officers' chain of command, the subject officer's Division Chief, APD Legal Advisor, and a Human Resource representative. Human Resources oversees the policies and procedures for the Independent Review Board.³⁹⁵ The Board is given access to the internal affairs investigatory files seven to ten days prior to meeting to review each case. After the Board is presented with the case by the Commander of Internal Affairs, it deliberates and recommends disciplinary action. The Chief can, and does, deviate from CRB recommendations. Ultimately, the final decision as to discipline and nature of corrective action is at the Chief's sole discretion.

The Independent Review Board ("IRB") process can be initiated by the Chief at their sole discretion (prior to making a disciplinary decision) *or* can be requested by an accused officer. The sole purview of the IRB, which is comprised of four members of the public and four members of the Department, is to make a recommendation about the appropriate corrective action and not to re-weigh factual findings of the Internal Affairs investigation. If requested by the accused officer, the Chief has the sole discretion to grant or deny an IRB review. Similar to the CRB process, the Chief can and does deviate from IRB's findings or recommendations. Multiple stakeholders indicated that the IRB process can add up to three months of additional time to the disciplinary process.

Of the many concerns that stakeholders discussed, the CRB and IRB elements of the current disciplinary investigation scheme were cited repeatedly as sources of inconsistency and unfairness. Some officers believed that having their case heard by the IRB was a right. Others understand it to be discretionary at the pleasure of the Chief. Under department

³⁹⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 19.

³⁹⁵ *Id.*

policy, officers can request an IRB review – but it is in fact at the Chief’s discretion to grant one.

Additional concerns were amplified in the minds of officers by inconsistency in following either the CRB and/or the IRB’s recommendations. One officer described both the CRB and IRB as “cover for the Chief to do what she wants to do.” Others described the IRB as a pointless exercise, with one officer summing up this view by noting, “If they agree with the Chief, their recommendation is followed to the letter. If they disagree, it is just ignored It is a waste of time.”

Many community stakeholders do not know what the role of the IRB is – or that half of the IRB consists of community members. Even some stakeholders that did know about community participation on the IRB expressed that it felt like “window dressing” and that community input was largely ignored in the process.

Consequently, 21CP recommends that the APD collaborate with community, the city’s HR department, the police union, and the Civil Service Commission to develop a more efficient and procedurally just investigative and deliberative process.

Recommendation 40.7. Officers, supervisors, and administrators should receive internal procedural justice training.

Internal procedural justice, as noted above, refers to the concept of fairness in processes that resolve disputes and allocate responsibilities. Procedural justice, as a general, is supported by four principled pillars: (1) being fair in processes; (2) being transparent in actions; (3) providing opportunity for voice; and (4) being impartial in decision-making³⁹⁶. Even as these pillars frequently are used in the policing context to guide officers through interactions with members of the public, they bear equal weight in deciding how a police department applies rules and makes decisions internally:

People want an opportunity not only to understand what is happening but also to feel they have an opportunity for voice [sic] to ensure their side of the story is heard. No one likes to feel their future is being decided upon at another person’s whim; rather, people want voice or representation in decisions that may directly affect them. We all want decision making to be guided

³⁹⁶ The Justice Collaboratory, Yale Law School, *Procedural Justice*, <https://law.yale.edu/justice-collaboratory/procedural-justice> (last visited June 1, 2021).

by impartiality, ensuring that biases did not influence the decision and ultimately the outcome.³⁹⁷

APD should provide training on procedural justice to all officers that emphasizes the applicability of the concept, both to interactions with the general public and interactions within the Department. 21CP understands that “[t]his has been done in the past and will be re-implemented in training going forward.”³⁹⁸

Recommendation 40.8. The Department should create a detailed Internal Affairs Manual that provides specific procedures and protocols for all aspects of misconduct investigations.

21CP recommends that, in addition to overhauling its basic procedures and policies on officer misconduct and misconduct investigations, APD create an Internal Affairs Manual that sets forth detailed protocols, procedures, and processes for how IA functions and how investigators must proceed through their investigations, including but not limited to:

- How complaint allegations are classified or categorized.
- Timelines and requirements for notification to implicated personnel and communication requirements for complainants on the status of ongoing investigations. “Completion of Internal Affairs investigations should occur as rapidly as is reasonably necessary to fulfill the investigative mission.”
- Requirements surrounding the interview of complainants, officers, and witnesses. This includes whether various interviews must be audio- or video-recorded.
- An investigative checklist of tasks that must be completed during an investigation or a detailed investigative chronology. “A sound investigative practice common to investigations includes the use of a chronological log in which investigators make entries as they advance their investigations.” Such a log “allow[s] supervisors to determine the effectiveness of their investigators and also helps other investigators take over a case when the original investigator is on leave or is removed from the case.”
- COPS Office guidelines for an investigative report and what should be included:
 - All allegations are clearly stated and clearly answered.
 - All relevant facts bearing on the truth of each allegation are clearly stated.
 - All evidence (e.g., photos, recordings, etc.) is included or its means of retrieval specified.

³⁹⁷ U.S. Department of Justice, Office of Community Oriented Policing Services, (Apr. 2015), *Organizational Change through Decision Making and Policy: Procedural Justice Course for Managers and Supervisors*, https://cops.usdoj.gov/html/dispatch/04-2015/a_new_procedural_justice_course.asp.

³⁹⁸ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 20.

- Contact and identification information for all persons interviewed and for the investigator(s) is included.
- The report is impartial, with no bias for or against any party.
- The report is logically organized with the aim of helping the reader understand it.
- Its language is clear, and where special terms of art are used, they are defined. The reader should not have to presume or guess the meaning of a term.
- It avoids conclusory statements wherever possible.
- Sentences and paragraphs are direct, simple, and easy to understand, using the fewest words to clearly convey the point.
- Estimates of time, distance, or other quantities should be as precise as reasonably useful but need not be precise beyond that.
- Unless explicitly permitted by agency policy, personal opinions should be avoided. If they are permitted, they should include explicit evidence to support the opinion.³⁹⁹

APD tells 21CP that the “Internal Affairs Bureau (IAB) uses forms and documents that outline those investigative steps. However, they are not in the form of a manual. Staff will reach out to other agencies for exemplars.”⁴⁰⁰

Recommendation 40.9. All officers, including supervisors, assigned to IA should receive formal Internal Affairs investigation training.

APD should ensure that Internal Affairs investigators receive continued training on conducting administrative investigations. This should include basic investigative skills and more specialized training addressing the particular issues and concerns that arise during the investigation of police conduct and performance. Training conducted by outside agencies and third-party vendors may be especially useful in this regard. APD indeed notes that “Internal Affairs (IA) staff are sent to IA investigation specific training hosted by professional organizations and attend as the training becomes available.”⁴⁰¹

Recommendation 41. The City of Aurora should examine its Civil Service Commission to ensure hiring and disciplinary decisions that are fair, efficient, timely, equitable, and consistent with the mission and goals of the City, APD, and community.

³⁹⁹ United States Department of Justice, Office of Community Oriented Policing Services, *Standards and Guidelines for Internal Affairs: Recommendations from a Community of Practice* 27-38 (2008), <https://cops.usdoj.gov/ric/Publications/cops-p164-pub.pdf>.

⁴⁰⁰ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 20.

⁴⁰¹ *Id.*

In the City of Aurora, the Civil Service Commission (“CSC”) serves as both the initial decisionmaker on hiring and the final level of disciplinary appeal for all sworn officers employed by the APD.

The Civil Service Commission is empowered by Aurora’s City Charter as the final level of disciplinary appeal for all sworn officers employed by the APD.⁴⁰² Aurora’s City Charter provides all civil servants, including police officers, the option of appealing any disciplinary decisions made by the Chief. The only exception to this right is for oral and written reprimands.⁴⁰³ 21CP’s review of the City Charter as well as the Commission’s Rules and Regulations reveals that this broad right of appeal is essentially only limited temporally by nature of filing deadlines.⁴⁰⁴ All appeals, without regard for substantive basis, are set for hearing by the Commission without any opportunity for APD to respond to its employee’s asserted reason for appeal.⁴⁰⁵ The CSC’s disciplinary review process is quasi-judicial and litigious in nature in that it makes provision for initial disclosures, discovery, motion practice, subpoenas, exhibits a de novo standard of review, and many other hallmarks of full-scale litigation.⁴⁰⁶ Under the current Civil Service Commission review process, appeals of disciplinary action are heard by the Commission between 15 and 30 days of the Commission receiving a Petition for Appeal (which is different from the date on which discipline was initially issued by the Chief). That timeframe can be extended by mutual agreement of the involved parties.

Additionally, for nearly 54 years, the Commission has – among other things – designed and administered the Civil Service examination to purportedly select the most qualified applicants, whether be it for an initial hire or promotion. The Commission serves as the “sole judge of qualification for new hires.⁴⁰⁷ In this way, the Civil Service Commission serves as a gatekeeper to positions within the Aurora Police Department. As discussed in more detail below, the City Charter also provides the CSC with vast authority to be the final arbiter of discipline within the City.

The Commission is staffed by an administrator, three analysts, and a team of individuals responsible for conducting background investigations of prospective employees. The entity

⁴⁰² Decisions of the Civil Service Commission may, under certain circumstances, be appealed into the civil court system. However, those appeals are very rare, and the burden for overturning a Civil Service Commission adjudication under administrative review is high.

⁴⁰³ City of Aurora Charter §3-16 (8)(j).

⁴⁰⁴ Rules and Regulations of Civil Service Commission at Sec. XI. 62, https://www.auroragov.org/UserFiles/Servers/Server_1881137/File/City%20Hall/Boards%20&%20Commissions/Civil%20Service%20Commission/CSCRulesRegsFinal.pdf (last visited May 27, 2021) [hereinafter “Rules and Regulations of Civil Service Commission”].

⁴⁰⁵ Rules and Regulations of Civil Service Commission at Sec. XI. 63. The Chief is expected to provide specific information regarding the charges, evidence and the officer’s disciplinary history prior to the CSC’s appellate hearing but, nonetheless, after a full hearing has been scheduled and noticed.

⁴⁰⁶ Rules and Regulations of Civil Service Commission at Sec. XII.

⁴⁰⁷ Rules and Regulations of Civil Service Commission at Sec. II.4.

also includes up to five registered voters, appointed to serve by the City Council, who currently reside in Aurora and are otherwise unaffiliated or not employed by the City.⁴⁰⁸ These members are appointed to serve three-year terms for up to nine consecutive years.⁴⁰⁹

A review of the City Charter and CSC Rules and Regulations alone might suggest that the organizational structure of the Commission allows it to fulfill its stated purpose of selecting “the most qualified applicants” and “to inspire public confidence.” However, interviews conducted by 21CP of police officers, elected officials, and the broader Aurora community suggested challenges in meeting these goals. Interviewees readily identified the essentially unchecked gatekeeping and decision-making authority of the Commission as a chief obstacle to: (1) hiring police officers representative of the community they serve, and (2) holding police accountable for misconduct. Police officers and community members alike spoke to what they characterized as an inordinately lengthy application process that spans more than several months and ultimately leads qualified applicants to pursue other employment. Several community members also expressed great concern about the lack of actual transparency to CSC processes as well as the lack of accountability for their hiring and firing decisions. Finally, many identified the authority of the Commission to override the Chief’s disciplinary decisions as undermining the ability of the APD to effectively manage its employees and pointed to, its historical decisions to reinstate officers whose conduct in highly publicized, racially charged incidents, as an ongoing betrayal of the values and expectations of the community it serves.

Recommendation 41.1. The Civil Service Commission appeal process should be modified and expedited to ensure it takes no more than 30 days from the date the discipline is issued by the Chief.

21CP recognizes that exigencies may occur that warrant a reasonable extension of time for an appeal to be processed. However, these circumstances should be relatively infrequent and, when they occur, the procedures for extensions should be specifically codified, strictly adhered to, and uniformly enforced in the same manner that they would be in any judicial or arbitration proceeding.

Transparency & Oversight

Recommendation 42. APD, in consultation with the community it serves, should develop processes and protocols – with standard timelines – by which information and details related to critical incidents are released in a timely and transparent manner.

⁴⁰⁸ City of Aurora Charter § 3-17.

⁴⁰⁹ *Id.*

In conversations with community members and elected officials, 21CP heard concerns about the timing of release and overall availability of information to the public about misconduct investigations and critical incidents such as use of force. For some stakeholders, lack of advance understanding about what is chosen to be released, when they release it, and the circumstances under which information becomes available fuels skepticism and mistrust.

As the President’s Task Force on 21st Century Policing noted:

Policies on use of force should clearly state what types of information will be released, when, and in what situation, to maintain transparency. This should also include procedures on the release of a summary statement regarding the circumstances of the incident by the department as soon as possible and within 24 hours. The intent of this directive should be to share as much information as possible without compromising the integrity of the investigation or anyone’s rights.⁴¹⁰

Several jurisdictions have found establishing clear protocols for the public release of information in the wake of critical incidents to have significant benefits. For instance, the Las Vegas Metropolitan Police Department has established a detailed policy on “Response to Deadly Force Incidents” that provides protocols and procedures for the public release of information about deadly use of force encounters.⁴¹¹

APD should work in collaboration with its employees, their union, community and other government stakeholders, to establish protocols for the release of information regarding use of force and other critical incidents so that there is clarity among APD supervisors and staff, city administration, elected officials, and the community, well before an incident may occur, about what should be released to the public, and when. APD indicates that the Department “agrees with this recommendation and will evaluate processes and best practices with collaboration from the District Attorneys.”⁴¹²

Recommendation 43. APD should collaborate actively with the community in the development and revision of its policies, procedures, and training.

“When people talk about accountability in policing, they usually are referring to the back end. Something bad has happened, it is not what should have happened, and so someone

⁴¹⁰ *Final Report of the President’s Task Force on 21st Century Policing* 22 (2015).

⁴¹¹ U.S. Department of Justice, Office of Community Oriented Policing Services and Crime and Justice Institute, Community Resource for Justice, *Assessment of the Collaborative Reform Initiative in the Las Vegas Metropolitan Police Department: A Catalyst for Change* 20-22 (2017), https://www.crj.org/assets/2017/07/5_COPS_LVMPD_report.pdf.

⁴¹² Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 21. APD also observes that “some portions of SB 20-217 stipulate release of some such details in critical incidents as well.” *Id.*

must be held accountable.”⁴¹³ The recommendations above, focusing on the officer misconduct investigation and discipline processes, address strengthening Aurora’s back-end accountability systems.

At the same time, forward-thinking approaches in policing are emphasizing the primacy of community participation in policing with respect to ensuring clear “rules in place before officials act, which are transparent, and formulated with public input.”⁴¹⁴

The community’s voice should inform all aspects of department operations, from how departments are structured to how officers use their time. Department leaders should seek community members’ concerns and desires when devising policing strategies, and community members should be able to provide input when policies are created and revised.⁴¹⁵

Communities and departments benefit when citizens can participate in setting ground-level expectations about what the police do and how they do it. This type of *front-end* accountability seeks to incorporate the community’s voice, input, feedback, and experiences into the performance expectations that APD sets to ensure that the Department’s performance affirmatively aligns with community needs. For the community to promote this type of upfront police accountability the community needs to be involved in the Department’s development and refinement of policies, procedures, and training initiatives.

APD tells 21CP:

We are engaging community groups to become involved in these areas. We’re in the process of bringing a civilian on to the Force Review Board (FRB), who will be a voting member/contributor. We are also presenting training and academy curriculum to the Community Policing Advisory Team (CPAT) for recommendations. APD will investigate additional strategies to engage the community in policy development.⁴¹⁶

⁴¹³ Maria Ponomarenko and Barry Friedman, “Democratic Accountability and Policing,” *in* 4 *Reforming Criminal Justice: Punishment, Incarceration, and Release* 5, 5 (Erik Luna ed., 2017).

⁴¹⁴ *Id.* at 8; *see, e.g.*, Barry Friedman, *Unwarranted: Policing Without Permission* (2017); Tracey Meares, “Policing and Procedural Justice: Shaping Citizens’ Identities to Increase Democratic Participation,” 111 *Northwestern University Law Review* 1525 (2017); Imani J. Jackson and Frank LoMonte, “Policing Transparency,” *Human Rights* (Jan. 7, 2020).

⁴¹⁵ Leadership Conference on Civil and Human Rights, *New Era for Public Safety: A Guide to Fair Safe and Effective Community Policing* 22 (2019).

⁴¹⁶ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 21.

Recommendation 44. The City of Aurora should move expeditiously to select an individual responsible for independently monitoring and auditing APD's adherence to, and the efficacy of, the Department's policies, disciplinary processes, and performance appraisal outcomes.

The City has announced the intention of hiring an Independent Monitor. 21CP understands that, among other functions, such a Monitor will work to identify and address gaps in the existing accountability structure. The institutionalization of such external oversight has the promise of leading to greater transparency and accountability.

AREA 6. EQUIPMENT, TECHNOLOGY, AND DATA SYSTEMS

As with most other enterprises in modern life, police departments increasingly rely on technology and specialized equipment to help them fulfill their missions. This section considers APD’s current use of equipment, technology, and data systems.

21CP stresses at the outset that this is not a comprehensive review of these topics, as standalone evaluations could likely be completed on the particular elements of APD systems and ways in which that the Department might better use them to enhance the quality of its service and the transparency of its activities. Instead, we focus on those issues that surfaced in interviews and focus groups of APD and community stakeholders or that we discovered in the course of our analysis of the Department’s policies, practices, and data.

As the National Institute of Justice has observed, “technology is having a positive impact on U.S. law enforcement agencies in terms of increasing efficiency, providing communication, enhancing information-sharing practices, and improving informational and analytical capacities.”⁴¹⁷ Technology can make at least some aspects of policing more effective, efficient, and safe – and can provide communities and their elected officials with expanded transparency and accountability.

It is also true that, at the same time, police technology and its use often moves faster than the laws, regulations, and ethical guidelines governing it. Often, the adoption of new technologies and systems can have unintended consequences. As President Obama’s Task Force on 21st Century Policing noted:

[D]espite (and because of) the centrality of technology in policing, law enforcement agencies face major challenges including determining the effects of implementing various technologies; identifying costs and benefits; examining unintended consequences; and exploring the best practices by which technology can be evaluated, acquired, maintained, and managed.⁴¹⁸

Privacy remains one of the most significant concerns raised as technologies like camera systems, facial recognition, and license plate readers have proliferated. Issues have also been raised about the possibility for bias to result from, or be embedded into, algorithms that may be used to predict crime locations, identify “hot spots” for police attention, or otherwise synthesize information of potential risks

Mindful that many technologies and tools carry both potential benefits and potential harms, many agencies are increasingly adopting new technologies pursuant to public input and the

⁴¹⁷ RTI International and the Police Executive Research Forum, *Research on the Impact of Technology on Policing in the 21st Century*, 2-3 (May 2016), <https://www.ncjrs.gov/pdffiles1/nij/grants/251140.pdf>.

⁴¹⁸ *Final Report of the President’s Task Force on 21st Century Policing* 31 (2015).

crafting of specific use policies in collaboration with community stakeholders. As President Obama’s Task Force on 21st Century Policing recommended, “[l]aw enforcement agencies should encourage public engagement and collaboration, including the use of community advisory bodies, when developing a policy for the use of a new technology.”⁴¹⁹

Like other major city agencies, the APD uses a wide array of technology to improve operational capability and efficiently manage the organization. The scope and type of APD’s technology and data systems are summarized in Figure 5.

Figure 5. Current APD Technology Applications

Software	Function	Organizational Responsibility
AIM	Internal Affairs, Early Intervention, Performance Appraisal Documentation	Professional Standards, City IT
Power DMS	Directive Management, Training Management	Professional Standards, City IT
RMS – Versadex	Records Management, arrest/booking, case management, evidence, CAD information, court case filings, etc.	Business Services – Police Systems Coordinator, City IT. Upgrade Underway
CAD - Intergraph	CAD – Moving to Versaterm	PSCC, City IT
Field Training - LEFTA	Field Training Officer Evaluation	Operations Division – FTTP Sergeant, City IT
Telestaff - Kronos	Scheduling, Tracking Work Time, Subpoena Management	Business Services – Police Systems Coordinator
Aurora Police Personnel System	Personnel Orders, Personnel Information, organization management/reporting	Business Services – Police Systems Coordinator
DMSS Foray	Digital Evidence	Electronic Support Section (ESS), City IT
PoliceOne Academy	Training Courses	Training Section
Aurora Learn	City Training Program	City IT, Training Section
Body Worn Cameras	Digital Storage, VieVue (RFP for replacement)	Electronic Support Section
ALPR/BOSS	License Plate Readers	Electronic Support Section, City IT
MORPHO TRAK	Portable Fingerprint Scanners	Colorado Bureau of Investigation
AFIS	State System	

⁴¹⁹ *Id.* at 35.

CO Criminal Information System	State System	
CO LE Emergency Radio (CLEER)	State System	
UCR/NIBRS	State System	
GIS	Geographic Information System	City IT
Microsoft Access	Database Software	City IT
SQL Software	Search and access databases – reporting	City IT
ProQA	Call Taking Software	City IT, PSCC
Mobile Data	Panasonic Tough Books	City IT, ESS
MESH Camera System	Stationary cameras in strategic locations (e.g., Colfax Avenue)	Electronic Support Section
COPLOGIC Nexis Lexis	Online Crime Reports (Will be replaced in the CAD system change)	Front Desk Supervisor
Justice Trax - LIMS	Crime Lab Requests	City IT
LINyX (coming on-line)	Similar to Lumen but managed by NCIC	Crime Analysts
Xtra Duty	Manages APD off duty jobs	Court Liaison/City IT
Code Red	Emergency Notification System (SWAT/ERT, etc.)	IT and Power Users in PD and Dispatch
Crime Free Properties	In-house app to report when APD responds to housing complex that register for APD program	City IT
Lumen (CISC)	Crime Analytics and metro search tool	Crime Analysts, City IT
Background Solutions	Processes potential APD recruits through background investigation	APD Background
Muni/State eSubpoena	Digital subpoenas from various courts	Court Liaisons
State eDiscovery	Case Filings with District Courts	State System
Coban & Milestone	Interview Room software	ESS and City IT
Imprivata	2 Factor Authentication	Used by 9-1-1/PD, City IT
Exacom	Records 911/Radio Traffic – APD call pull the recordings	City IT
Picture Link	Mugshots and line ups	City IT
BRAZOS	e-ticketing for MET/Traffic	City IT
Versadex	e-ticketing Patrol	City IT
Perfect Mind	cash register	Parks & Rec
Report Beam	Accident reporting (Will be replaced in the CAD system change)	City IT

Source: APD, 21CP Synthesis of APD Information.

The City IT Department is responsible for many of the programs the APD uses and provides technical support or maintenance for others. Human resources devoted to supporting technology used in the department is shown in Figure 6. Eleven of the 13.5 full-time employees roles (“FTE”s) assigned to APD technology functions are filled by sworn personnel. They are supported by 6 city IT professionals.

Figure 6. APD Technology Staffing

Electronic Support Section
7 Sworn
1- Lieutenant, 1- Sergeant, 1- Agent, 4 Officers
Business Services
2.5 Nonsworn
1 - Police Systems Coordinator
1 - Sr. Financial Analyst –nonsworn
.5 - Manager Business Services
Professional Standards Section
4 Sworn
1 - AIM
2 - PowerDMS 1 - Sergeant 1- Officer
1 - Versadex – Sergeant
City IT
6 FTE

Source: APD

APD technology personnel are primarily assigned to the Professional Accountability and Business Services Divisions. These functions are described below.

Professional Accountability Division

Electronic Support Section (“ESS”). ESS is a 7-person section that manages the largest concentration of technology outside of the city IT Department. In addition to serving as the primary liaison for the IT Department, the Section is “responsible for the management of the Department’s shared resource files on the City Computer Network.”⁴²⁰ It is also accountable for development of technology initiatives, purchasing standardization, a department wide resource for technology, and assisting investigative units. ESS is responsible for coordinating:

- Mobile Data Computer development and training;

⁴²⁰ APD Directive 3.09, Section 3.09.

- Radio accountability to include call signs and profile development and management;
- License plate reader system management and training;
- Surveillance camera system management and training; and
- Body-worn camera footage (digital storage).

Professional Standards Section (“PSS”). PSS is a 14-person section that has a range of responsibilities that include technology. The Section manages accreditation, staff inspections, policy research and development, and Force Review Board case preparation. The section has a Sergeant that is currently accountable for all of the training associated with APD’s upgrade of the Versadex records management software. The other person working on the records management software is in the Business Services Division. PSS also has a sworn officer responsible for the Department’s AIM system, an officer performance-tracking platform, and another officer for PowerDMS, a system which primarily relates to training.

Business Services Division (“BSD”)

BSD provides a range of support services to the APD. It handles records, property & evidence, budget development, personnel functions, and serves as the liaison to the City Fleet Services Department.⁴²¹

BSD also includes the Police Systems Coordinator (“PSC”). As indicated in APD Directive 3.05:

[The] Police Systems Coordinator is responsible for maintaining advanced level of technical proficiency concerning all aspects of Department software applications including reporting, system interfaces, testing system upgrades, maintaining data updates and permissions, monitoring licensing, proposing business process changes, coordinating improvements with IT, troubleshooting, and personnel training and documentation. Systems include:

- Police Records Management
- Scheduling
- On-line Crime Reporting
- Directive Management System
- Aurora Police Personnel System
-

⁴²¹ APD Directive 3.05.

The Police Systems Coordinator will be responsible for Department training relating to the above systems and provide consultation regarding all new and existing systems which may interface with the above systems.⁴²²

In contrast to most other full-time IT positions within APD, which are filled by sworn officers, the PSC is a non-sworn employee with an IT background. The PSC spends most of their time supporting the Versadex records management system, Telestaff, and Aurora Police Personnel System (“APPS”). Telestaff is the department’s scheduling application that informs payroll. It also supports subpoena management and tracks training hours. APPS is a locally developed program that contains data from Human Resources and the police department. It tracks personnel assignments, basic data on each employee (demographics, rank, shift, days off, etc.) and produces personnel orders for assignments and promotions.

There are other employees in the APD that are responsible for working with various technology systems, but doing so is not a primary role or responsibility. Training staff, for example, interact with the training management system as part of their responsibilities.

Recommendation 45. APD should develop a three-to-five-year Technology Plan that identifies technology-related priorities; provides clear deadlines, milestones, and deliverables relating to technology implementation; and identifies structural and process changes for the selection, implementation, maintenance, and oversight of technological systems and tools.

APD does not currently have an overall technology strategic plan to guide and manage their technology investments. As the Department of Justice’s Community Oriented Policing Services Office as observed, the creation of a technology strategic plan is a primary “best practice” with respect to data systems:

An agency’s use of technology should support and enhance the organization’s functions, expand its ability to make intelligence-based decisions, and provide solutions to complex problems—not create complexity and inefficiencies. Whether an agency is developing a new data system or leveraging existing internal or external resources for data collection, analysis, and sharing, law enforcement executives should begin by developing a formal technology strategic plan.⁴²³

As the above discussion details, although the ESS is the lead technology entity in APD, key parts of the technology portfolio are spread across the Professional Accountability and

⁴²² *Id.*

⁴²³ U.S. Department of Justice, Office of Community Oriented Policing Services, *Law Enforcement Best Practices: Lessons Learned from the Field* (2019), <https://cops.usdoj.gov/RIC/Publications/cops-w0875-pub.pdf>.

Business Services Division – and are all subject to the support of City IT. The development and execution of a technology strategic plan can help better coordinate priorities, resources, and efforts.

Interviews with APD personnel also suggested the Department could do a better job of planning for the replacement or upgrade of out-of-date technology. A strategic plan that specifically addresses maintenance costs, replacement requirements, and the acquisition of new systems might ensure more efficient and timely technology improvements. APD says that it “agrees with this recommendation and will work with our Electronic Support Section (ESS) and City IT to develop a plan.”⁴²⁴

Recommendation 45.1. In the development of the Technology Plan, APD should establish a Technology Working Group that includes the City IT public safety team, representatives from all areas of APD, and community members.

Based on stakeholder interviews, it appears that there is a good working relationship between City IT’s public safety team and APD personnel with respect to technology implementation and maintenance. Consequently, APD and the City should leverage and grow this existing relationship by including a diverse group of stakeholders in the process of developing the Technology Plan.

It is also essential that APD personnel from operational units participate in this planning effort, as they know the challenges and problems that technology can best address. For example, 21CP heard general dissatisfaction with the Department’s AIM system. As one stakeholder noted, “Nobody likes AIM. We are making the best of it, but we need a new system.” “The system is bad, things can be deleted and lost.” Other personnel discussed how the Department’s multiple, disparate systems don’t work well together. As a stakeholder summarized, “We have so many applications that should integrate with each other but don’t. For example, digital evidence does not talk with RMS.” Operational personnel also identified specific, new systems that might benefit the Department’s operations, including an inventory management system, enterprise learning solution, and cloud-based digital media storage.

Individuals who work regularly with data collection and analysis within the Department should also be a part of the process of developing a Technology Plan. For instance, crime analysts are a good source for understanding the limitations of current systems and data quality.

This recommendation recognizes that the use of technology in the law enforcement context has become a high-profile issue and concern to some members of the community in recent

⁴²⁴ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 21.

years. Greater transparency and the ability for the community to help shape front-end priorities may help address community concerns and ensure the adoption of tools that are consistent with community values. Accordingly, community members should be directly involved in helping to set priorities, consider new technologies, and develop policies for their implementation and use.

With respect to this recommendation, APD says that the Department “will partner with IT to establish identification of roles and responsibilities.”⁴²⁵

Recommendation 45.2. APD should work to streamline technology roles and responsibilities.

Again, major APD technology functions are spread across several units and locations, including Professional Accountability, Business Services, City IT, and Public Safety Technology. The manner in which coordination between the areas takes place is not clear. For example, responsibilities for the Versadex RMS upgrade are spread between City IT, Business Services, and Professional Accountability. This disjointed approach risks making the implementation and maintenance of technology systems less efficient than it should be.

For this recommendation, APD also says it “will partner with IT to establish identification of roles and responsibilities.”⁴²⁶

Recommendation 45.3. APD should explore the civilianization of IT and technology-related responsibilities.

As described previously, APD has 13.5 full-time employees dedicated to supporting technology in the department. Most (11) are sworn officers. Although many large departments have a mix of sworn and nonsworn employees working in IT, the trend among police departments is increasingly toward filling technology positions with nonsworn technology personnel. Doing so frees sworn personnel to work in assignments for which being a law enforcement officer is necessary while providing the opportunity to benefit from professionals specifically trained and experienced in technology. For instance, the Charlotte-Mecklenburg North Carolina Police Department staffs all of the IT positions with nonsworn personnel.⁴²⁷ The Fairfax County, Virginia Police Department has 21 non-sworn personnel supporting their technology needs, including CAD and RMS.⁴²⁸ APD noted to 21CP that it is actively looking to civilianize the IT function.

⁴²⁵ *Id.*

⁴²⁶ *Id.* at 22.

⁴²⁷ 21CP Conversation with Crystal Cody, Public Safety Technology Director, City of Charlotte.

⁴²⁸ Fairfax County Police Department, *5-Year Strategic Staffing Plan FY 2019 - FY 2023*, <https://www.fairfaxcounty.gov/police/sites/police/files/assets/images/chief/reports/fcpd%205-year%20strategic%20staffing%20plan.pdf> (last visited May 11, 2021).

Recommendation 46. APD should purchase, issue, and maintain all firearms. An assessment should be conducted to determine if there are other less-lethal devices that should be purchased as well.

Currently, all APD officers are required to purchase their own firearms. All are required to purchase Glock handguns now, but other makes and models have been grandfathered into use. Some officers continue to carry guns they purchased decades ago. To ensure standardization, promote safety, and consistently articulate that all aspects of a police officer's duties are regulated by and in service of the City for which the officer works, APD should purchase, issue, and maintain all firearms. 21CP understands that APD has a budget request pending that would include purchasing weapons, which would align with this recommendation.

Recommendation 47. The City should conduct a facilities and equipment review to ensure that APD officers continue to have the tools that they need to address community needs and problems.

In interviews and focus groups, APD personnel raised a number of concerns about equipment and facilities. As one member put it, "We are not keeping current with our equipment. We are using ten-year-old equipment that should have been replaced five years ago." Officers identified what they say are specific needs. "We need a bigger and better dispatch center," said one officer. "There are not enough cars available when needed," according to another.

21CP is always mindful that many people, especially those working for government agencies, can cite ways that their employer could support them better in terms of equipment, on-the-job resources, or facilities. Because 21CP began and completed its work in the context of the COVID-19 pandemic, we were not able to survey the Department and reach our own, independent conclusions about the adequacy of APD's equipment and facilities.

Nevertheless, we also encourage any employer or police department to respect feedback from employees about access and availability of tools and infrastructure that facilitate the performance of their duties. As such, 21CP recommends that the City conduct a facilities and equipment review to ensure that APD have the specific tools and infrastructure that they need to meet the communities' needs. APD indicates that it "provides input and participates with city management in establishing capital improvements."⁴²⁹

We note that the recommendation to conduct a review does not assume that more expenditures will necessarily be required. It may be that no major needs are identified. It may be that APD's existing tools and infrastructure should be modified to better align with

⁴²⁹ Aurora Police Department, *Response to 21CP Solutions Recommendations for the Aurora Police Department* (June 17, 2021) at 22.

policing strategies focused on community problem-solving. It may be that certain enhancements are necessary and sufficiently align with community needs and values. Ultimately, the process of conducting the review is the process of considering the subjects of equipment, infrastructure, and personnel tools in the context of larger discussions about the role of police in enhancing public safety in Aurora going forward.



Matthew Barge
Jessica Drake
Ayesha Hardaway
Kathleen O'Toole
Charles H. Ramsey
Sean Smoot
Darrel Stephens
Project Team

Jeff Asher
Ben Horwitz
Data Analytics

21CP Solutions 477



CITY OF AURORA

Council Agenda Commentary

Item Title: City Council IT Support Expansion
Item Initiator: Scott Newman, Chief Information Officer
Staff Source/Legal Source: Scott Newman, Chief Information Officer
Outside Speaker: N/A
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: N/A

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

- Approve Item as proposed at Study Session Information Only
- Approve Item and Move Forward to Regular Meeting
- Approve Item as proposed at Regular Meeting
- Approve Item with Waiver of Reconsideration
Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

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

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

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

N/A

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

Scott Newman, Chief Information Officer, will review expanded service hours for Council technology support and the process to provide that support.

QUESTIONS FOR COUNCIL

This item is informational for Council only.

LEGAL COMMENTS

The City Manager shall be responsible to the Council for the proper administration of all affairs of the city placed in his charge and, to that end, shall have the power and duty to make written or verbal reports at any time concerning the affairs of the City. City Charter § 7-4(e).Best

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: N/A

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: N/A

City Council - Information Technology Support

SUPPORT HOURS

Support is available 7 days a week from 8am - 8pm (excluding City holidays)
(If the issue is not urgent please reach out during normal business hours Monday - Friday 8-5)

1. Contact Stephanie Swan first via phone, text or email sswan@auroragov.org
2. If Stephanie is not available you can send an email to ITCouncilSupport@auroragov.org
3. IT will contact you within 1 hr on weekdays and within 2hrs on weekends

IT staff is available to assist with technical request prior to Executive Sessions,
Study Sessions and Council meetings
Send email to ITCouncilSupport@auroragov.org



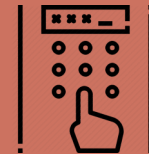
EMAIL PASSWORD MANAGEMENT

- ⇒ NEVER share your passwords - Including with IT Department staff
- ⇒ Email account passwords expire every 90 days
- ⇒ Expiration alerts are emailed 15 days, 7 days and 1 day prior to expiration.
- ⇒ Members can change passwords at the dedicated walk-up computer in the City Council office.
- ⇒ Passwords are required to be at least 8 characters with a capital letter and a number or special character.



iPAD PASSCODE MANAGEMENT

- ⇒ This device requires a 6 digit passcode for access.
- ⇒ The passcode expires every 90 days
- ⇒ Alert to change passcodes are sent prior to expiration.



SUPPORTED DEVICES

City issued iPad and Laptops

NON- SUPPORTED DEVICES

Personal PCs, Laptops, Tablets, iPads, home network and printers
Personal Cell Phones (initial City email setup supported)



OUTGOING COUNCIL MEMBERS

City Council members who are leaving office will have the option to purchase their City device at a fair-market value.



CITY OF AURORA

Council Agenda Commentary

Item Title: Capital Infrastructure Master Plan (Transportation) – Public Works
Item Initiator: Cindy Colip, Public Works Director
Staff Source/Legal Source: Cindy Colip, Public Works Director/Michelle Gardner, Sr. Assistant City Attorney
Outside Speaker: n/a
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: n/a

ITEM DETAILS: Enter all applicable information from following list in the highlighted area below:

Estimated Presentation/discussion time

30 minutes/10 minutes

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

- Approve Item as proposed at Study Session
 - Information Only
 - Approve Item and Move Forward to Regular Meeting
 - Approve Item as proposed at Regular Meeting
 - Approve Item with Waiver of Reconsideration
- Why is a waiver needed? [Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

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

- Recommends Approval
- Does Not Recommend Approval

Forwarded Without Recommendation

Recommendation Report Attached

Minutes Attached

Minutes Not Available

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

The Capital Infrastructure Master Plan (CIMP) has been discussed previously with Council, including the February 9th Winter Workshop. At that time, Council supported resuming the process following a COVID-related hiatus. At the April 5th Study Session, Council agreed to take part in meetings designed to learn more about CIMP projects.

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

This will be a summary of the Public Works Transportation CIMP-related projects.

QUESTIONS FOR COUNCIL

Informational only

LEGAL COMMENTS

The City Manager, or his designee, shall be responsible to the Council for the proper administration of all affairs of the City placed in his charge and to make written or verbal reports to the Council concerning the affairs of the City under his supervision. City Charter §7-4(e). (M. Gardner)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: Informational only

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: N?A



CITY OF AURORA

Late Submission Approval for Agenda Item

Item Title: Capital Infrastructure Master Plan – Public Works
Item Initiator: Cindy Colip, Public Works Director
Staff Source/Legal Source: Cindy Colip, Public Works Director/Michelle Gardner, Senior Assistant City Attorney
Outside Speaker: n/a
Council Goal: 2012: 3.0--Ensure excellent infrastructure that is well maintained and operated.

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

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

COUNCIL MEETING DATES FOR LATE SUBMISSION:

Study Session: 8/16/2021

Regular Meeting: n/a

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

Per City Manager and Interim DCM, please consider this request to add this item to the 8/16/2021 Study Session. Brooke Bell will sign on behalf of Marshall as Acting Interim DCM on 8/5 and 8/6. Public Works will be presenting the Capital Infrastructure Master Plan for council consideration.

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

Cindy Colip

Agenda Item Initiator Name

Brooke Bell

Late Submission Approver Name

Cindy Colip

Agenda Item Initiator Signature

8/5/2021

Date

Brooke S Bell

Late Submission Approver Signature

Interim DCM for Marshall Brown 8-5-2021

Date



CIMP III Projects

Public Works - Transportation



Cindy Colip

Director of Public Works

THE CORE



Integrity
Customer Service
Respect
Professionalism

CIMP III Development

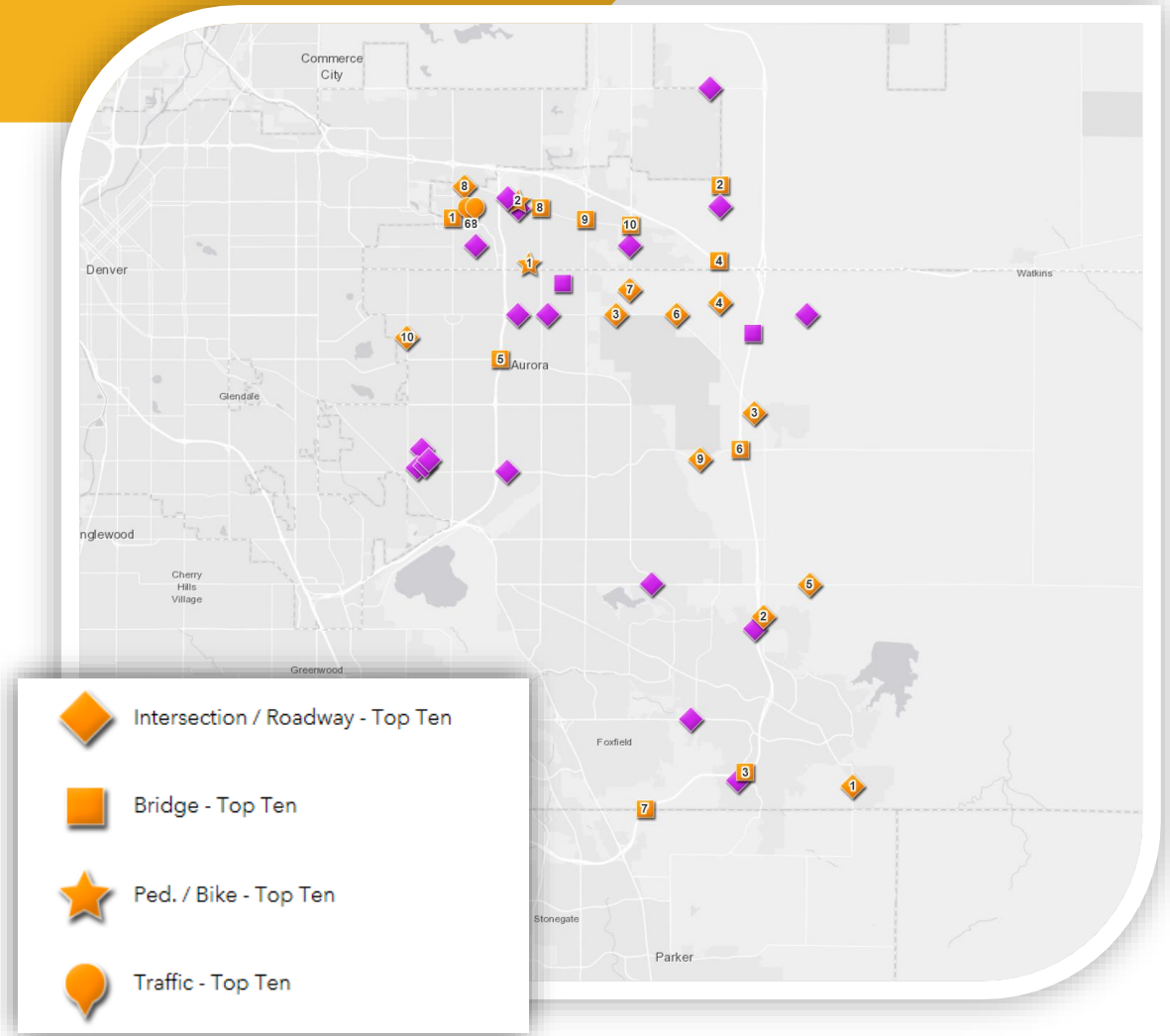


- CIMP III – Published November 2019
 - Public Works Submitted 63 Transportation Projects
 - Totaling \$979,000,000 in Estimated Cost
- Refinement
 - Removed Projects that have been programmed
 - Removed Projects completed by development
 - Divided some Projects into segments
 - Refined scopes and estimates
 - Categorized Projects by type
 - Prioritized Projects within each type
- Current List
 - 55 Transportation Projects @ \$771,000,000

Transportation Projects



- Projects Categorized By Type
 - Bridge – 12
 - Roadway / Intersection – 30
 - Traffic - 9
 - Bicycle / Pedestrian - 4
- Interactive GIS Map
 - Located at:
<https://auroraco.maps.arcgis.com/apps/webappviewer/index.html?id=f27c4f7bd7f7469194bbd7ddcf6b14f>



Today's Approach



- Review of PWD CPF Utilization
- Top 5 Priorities in Each Category
- Questions & Discussion

Public Works Capital Projects Fund



2021 Public Works Capital Funding

Annual Appropriations

Roadway Maintenance Programs (annual appropriation)	2021 Adopted Budget
Street Asphalt Overlay	15,310,000
Street Asphalt overlay (in house)	840,848
Street Reconstruction	1,100,000
Chip/Slurry/Crack Seal	1,650,000
Concrete Repair (Curbs and Sidewalks)	2,240,000
Bridge Maintenance	50,000
Traffic Signal Maintenance / Component Replacement	550,000
Traffic Signal Inspection and Repair	50,000
Other Improvement/Construction Programs (annual appropriation)	
Miscellaneous Street Improvements	1,420,000
Traffic Signal Construction	700,000
Bicycle Aurora Master Plan Implementation	200,000
TOD First/Last Mile Bike and Ped Improvements	140,000
Traffic calming Improvements	325,000

One-Time Funding

Cost Shares/Grant Matches (one-time projects)	2021 Adopted Budget
Concept design Gun Club / Alameda Widening with Arap County	350,000
E470 Loan repayment (Hogan Parkway)	235,000
DRCOG Transportation Improvement Program (TIP)*	1,992,420
*2021 matches include: Nine Mile Bike/Ped, High Line Canal Trail (PROS)	
Havana Transit Improvements (Planning)	
Example of other capital fund uses	
Building Security Projects	440,000
Building Repair Fund	857,520
Allocation of Staff Time to Capital Projects	1,557,244
Allocation of Staff Time to Facilities Projects	157,313

Bridges



Top Ranked Projects

1. Peoria over Sand Creek
2. Picadilly over First Creek
3. Gartrell over E470
4. Alameda over I-225
5. Jewell Widening over E470



PEORIA BRIDGE OVER SAND CREEK

Reconstruct & Widen to match 6-lane sections to North & South

**Funding for Preliminary Design
in COA 2021/2022 Budget**

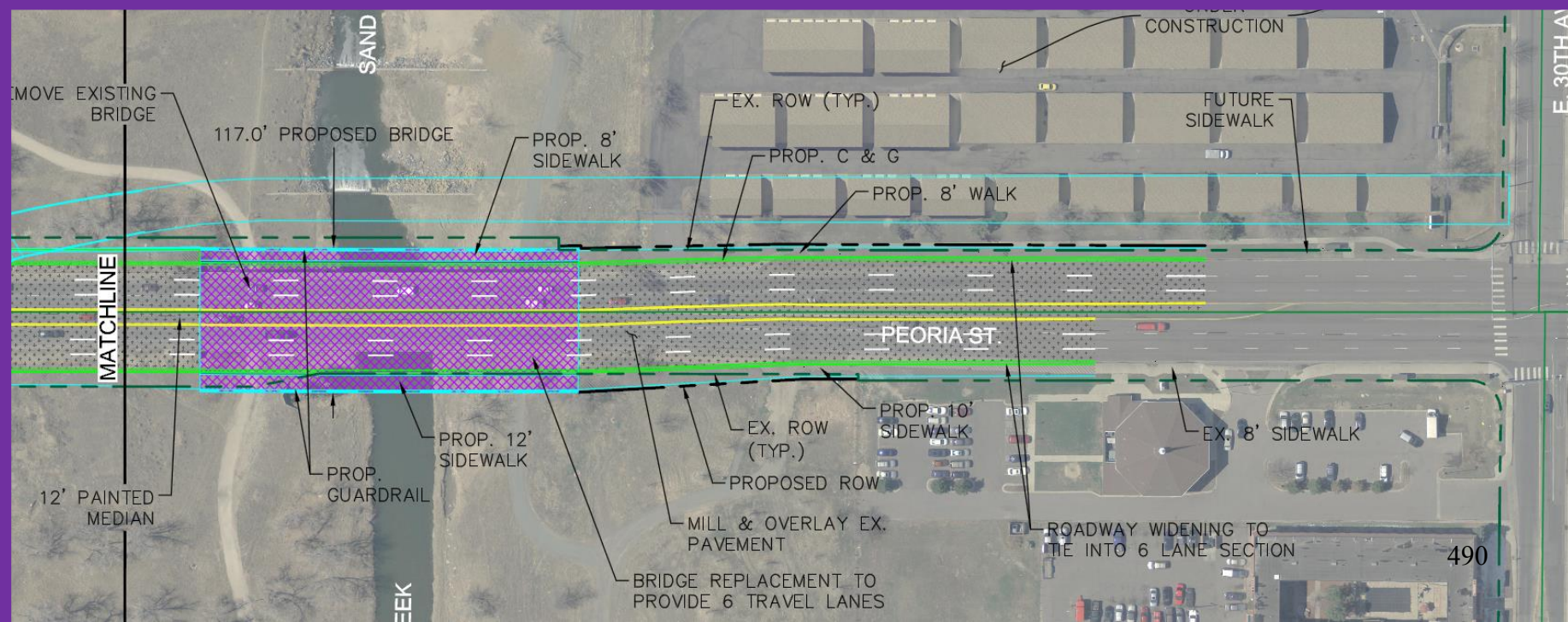
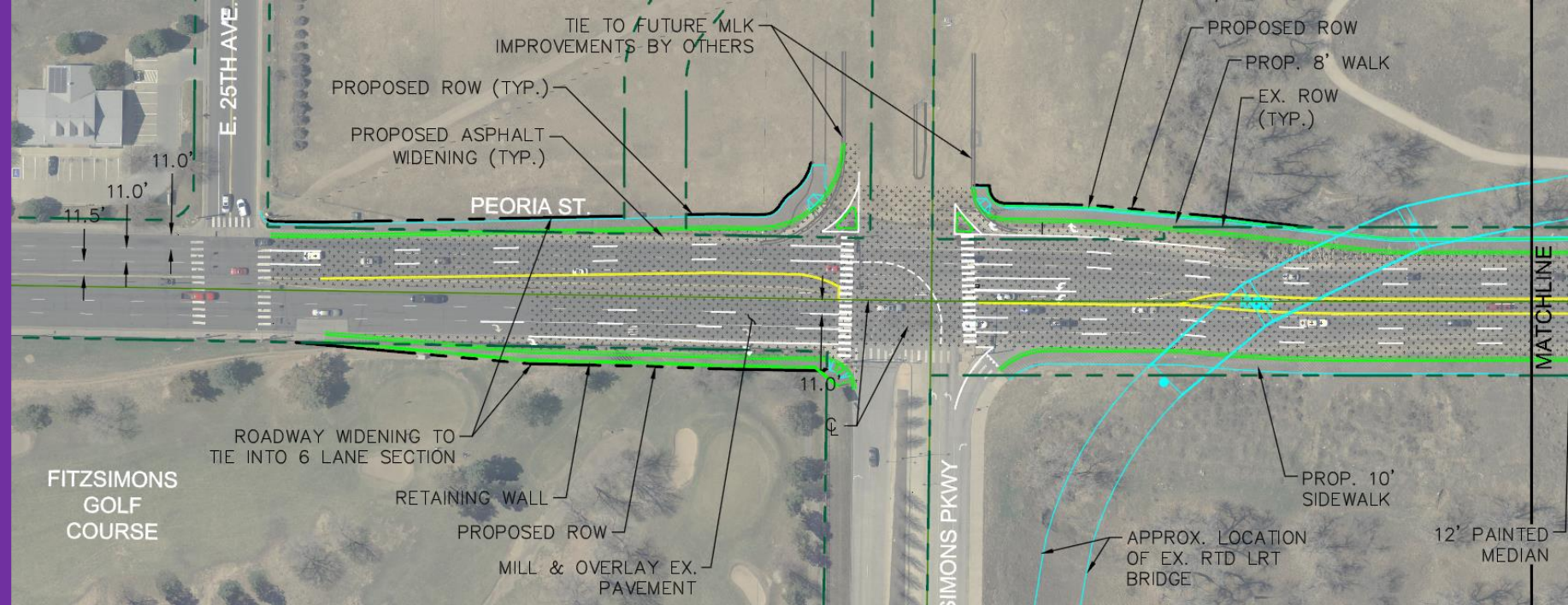
**Bridge Rating one of lowest in
City**

**Capital Cost
\$19,000,000**

**Operating Cost
\$15,000**

Project Benefits
Structural Safety
Capacity
Multi-Modal
Travel Reliability
Mobility
Employee Center Access

1.1



PICADILLY BRIDGE OVER FIRST CREEK

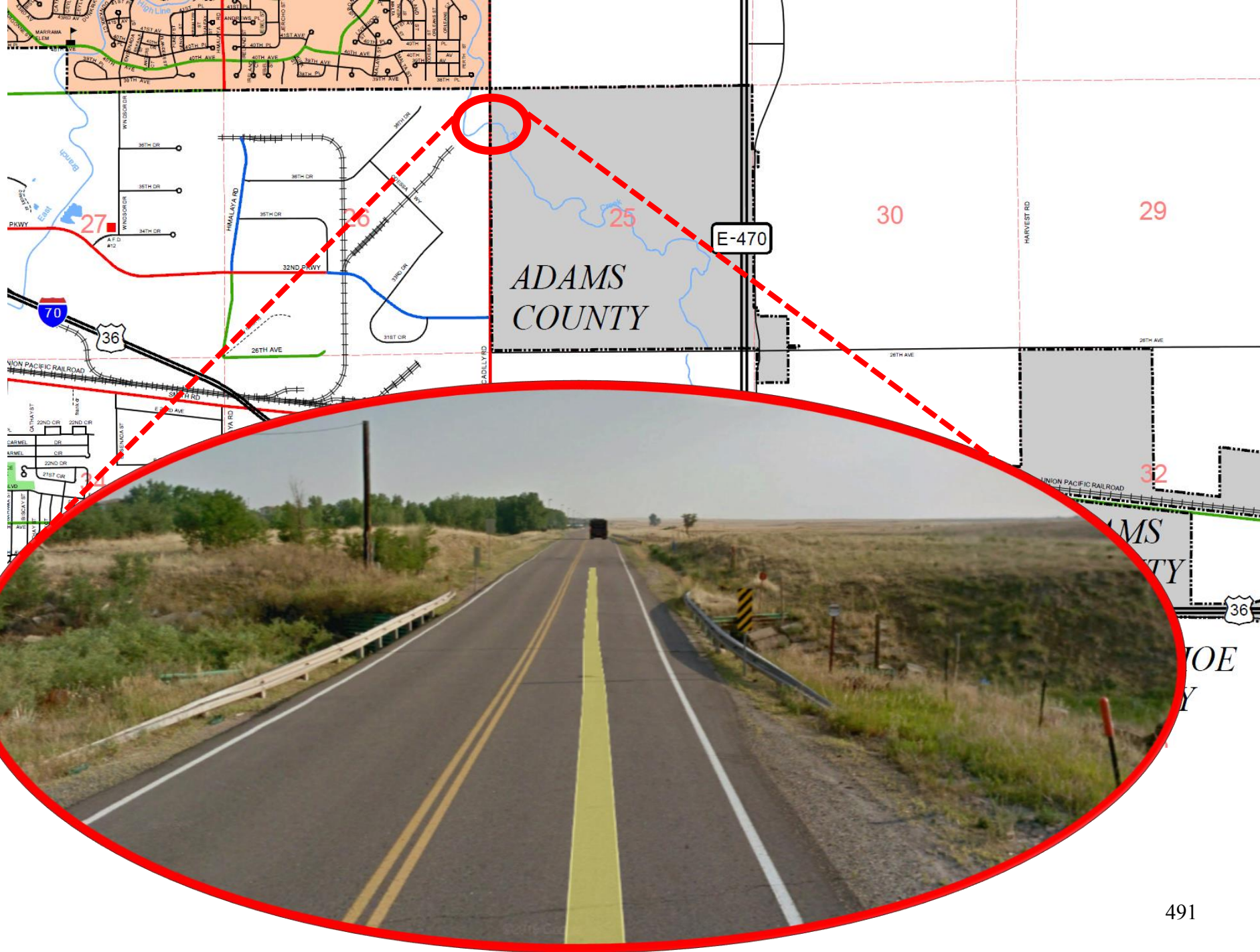
Reconstruct to full future 6-lane arterial section

Bridge Rating one of lowest in City

City Capital Cost
\$5,000,000

Operating Cost
\$15,000

Project Benefits
Structural Safety
Capacity
Multi-Modal
Travel Reliability
Mobility



GARTRELL WIDENING OVER E470

Current project to design 5-lane roadway section over E470

Project only funded for design by SARIA

Construction TBD

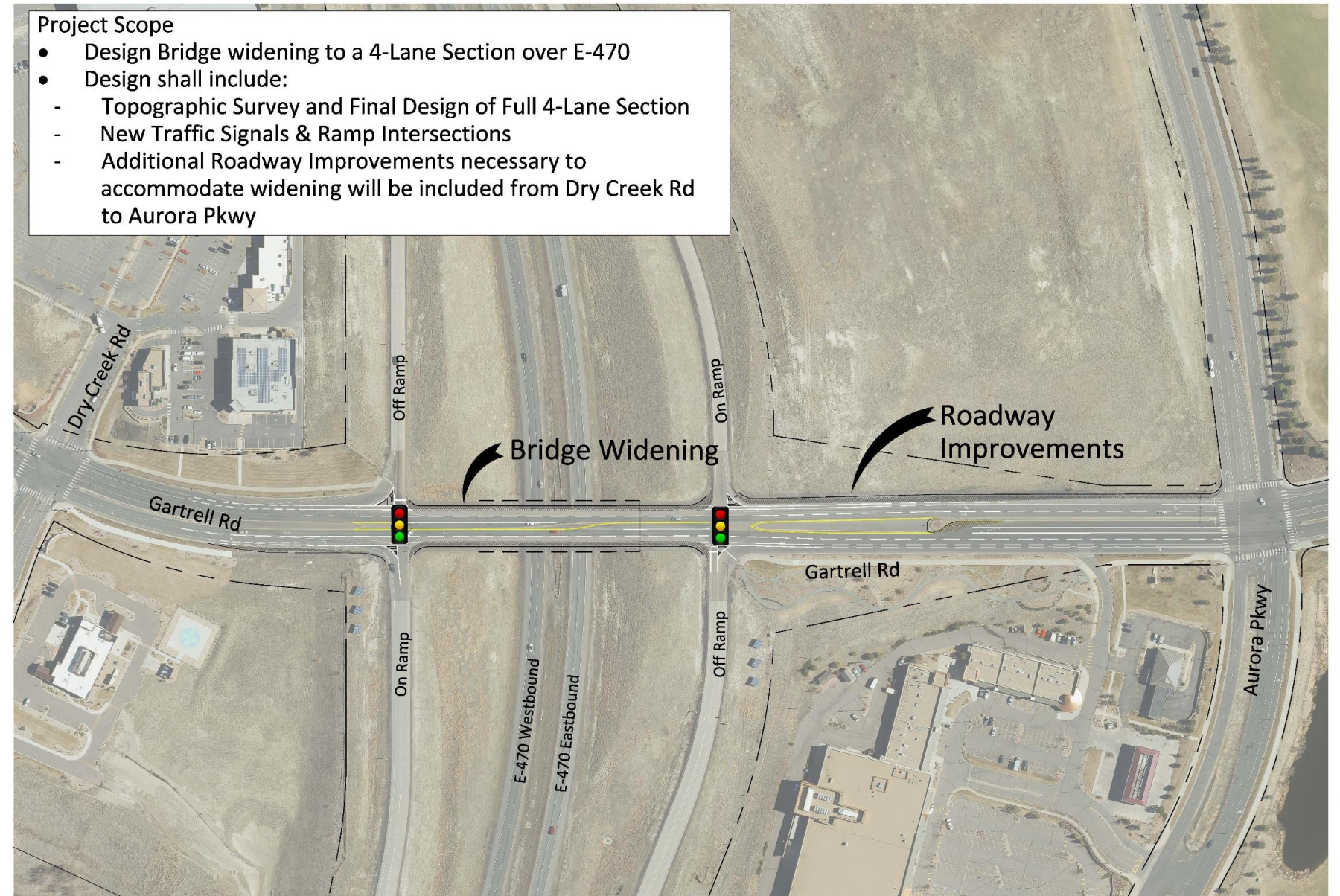
Capital Cost
\$6,000,000

Operating Cost
\$5,000

Project Benefits
Capacity
Multi-Modal
Safety
Travel Reliability
Mobility

Project Scope

- Design Bridge widening to a 4-Lane Section over E-470
- Design shall include:
 - Topographic Survey and Final Design of Full 4-Lane Section
 - New Traffic Signals & Ramp Intersections
 - Additional Roadway Improvements necessary to accommodate widening will be included from Dry Creek Rd to Aurora Pkwy



City of Aurora, Colorado
Public Works Department
15151 E. Alameda Pkwy, Aurora, CO 80012



Gartrell Road Improvements
Dry Creek Rd to Aurora Pkwy

ALAMEDA BRIDGE OVER I-225

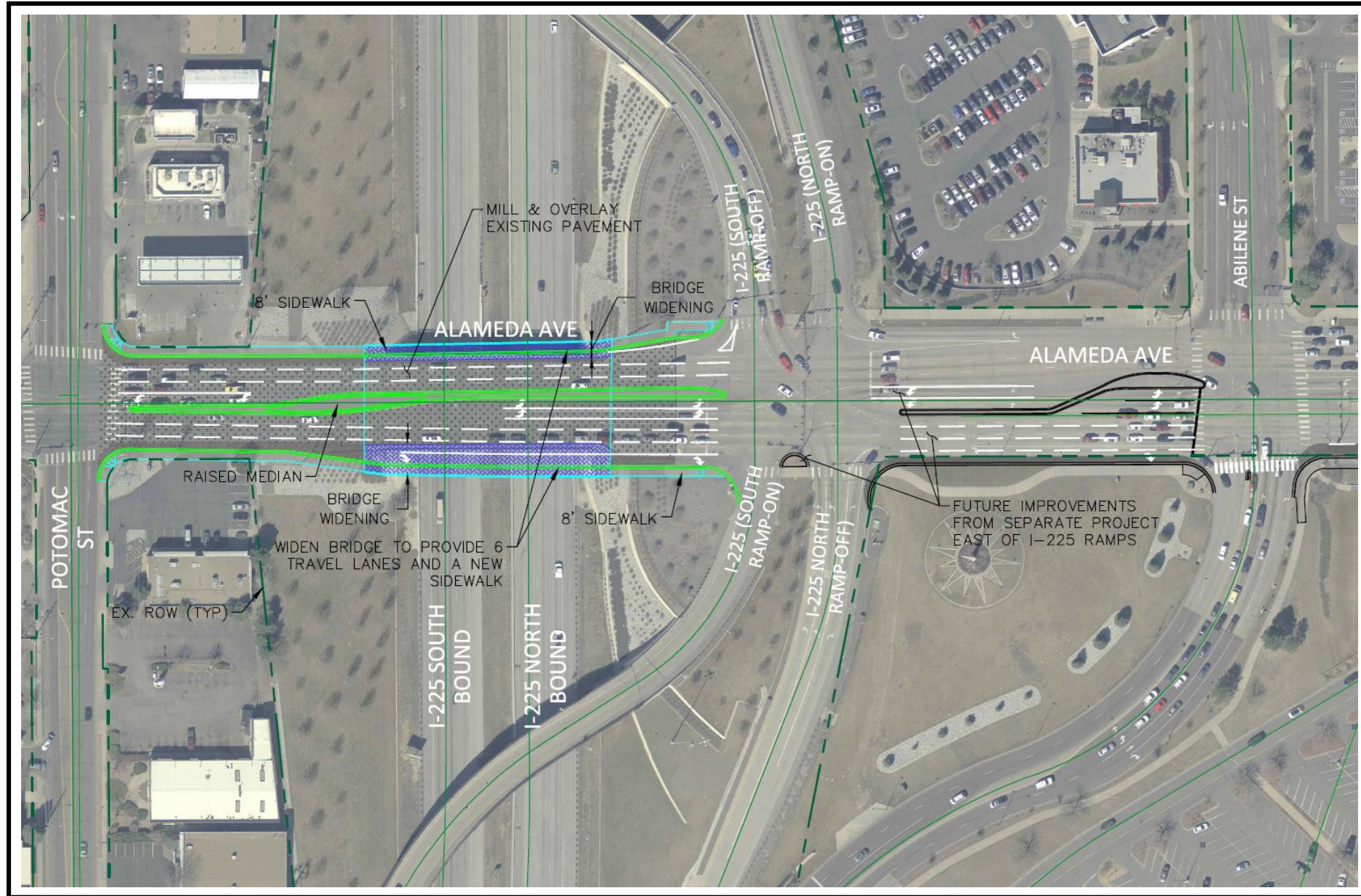
Widen bridge to include 8' sidewalks.

Includes additional turning lanes for eastbound traffic to improve operation of I-255 Ramps

Capital Cost
\$20,000,000

Operating Cost
\$5,000

Project Benefits
Capacity
Safety
Multi-Modal
Travel Reliability
Mobility



JEWELL BRIDGE WIDENING OVER E-470

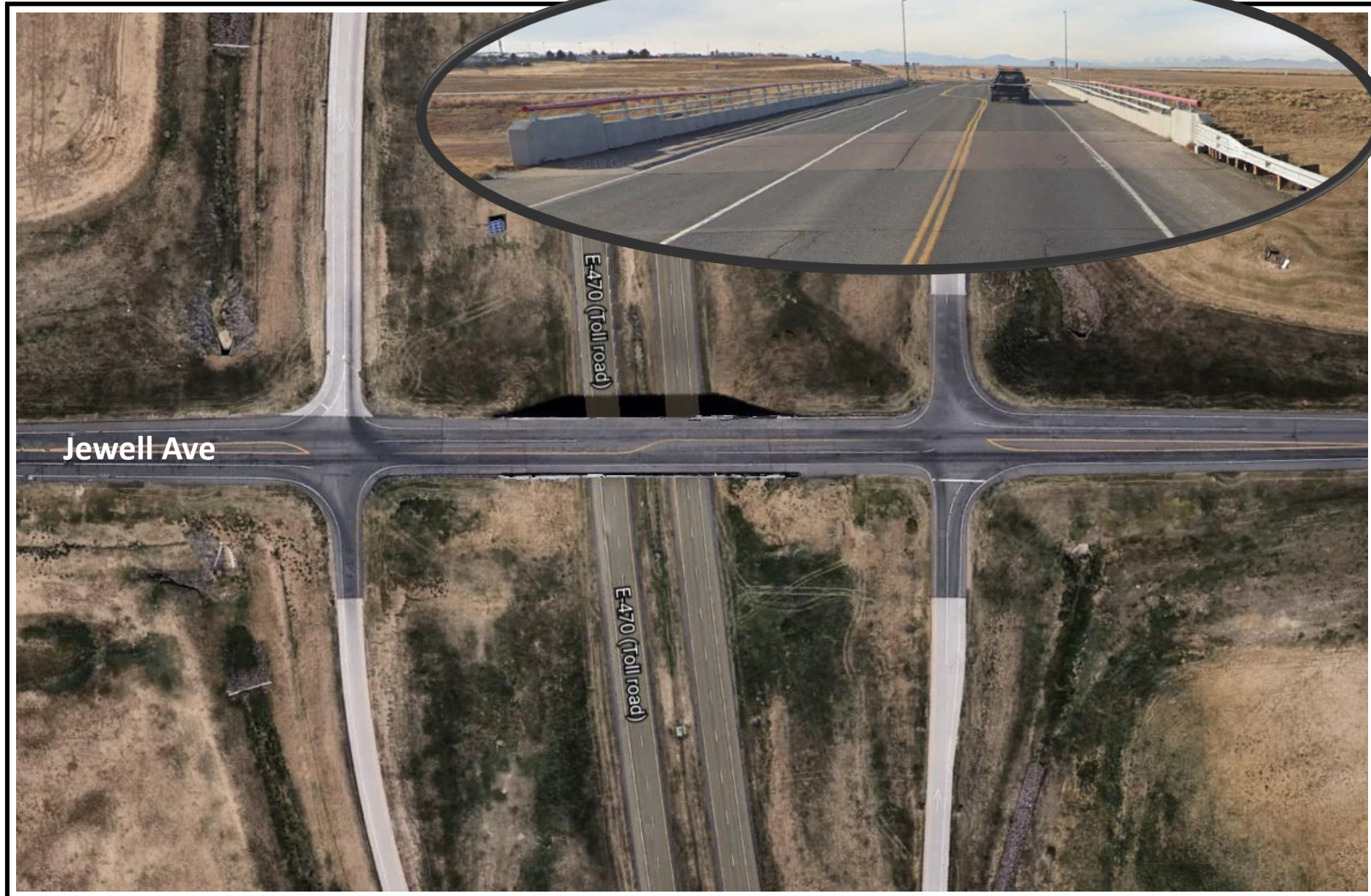
Widening of bridge to accommodate full roadway section.

Current bridge does not include pedestrian facilities.

Capital Cost
\$7,000,000

Operating Cost
\$5,000

Project Benefits
Capacity
Multi-Modal Safety
Travel Reliability
Mobility



Roadway / Intersection



Category 2

Top Ranked Projects

1. Gun Club – South of Quincy
2. Powhaton – Smoky Hill to County Line
3. 6th Avenue – Airport to Hogan
4. Picadilly – Hogan to 11th
5. Quincy – Gun Club to Powhaton

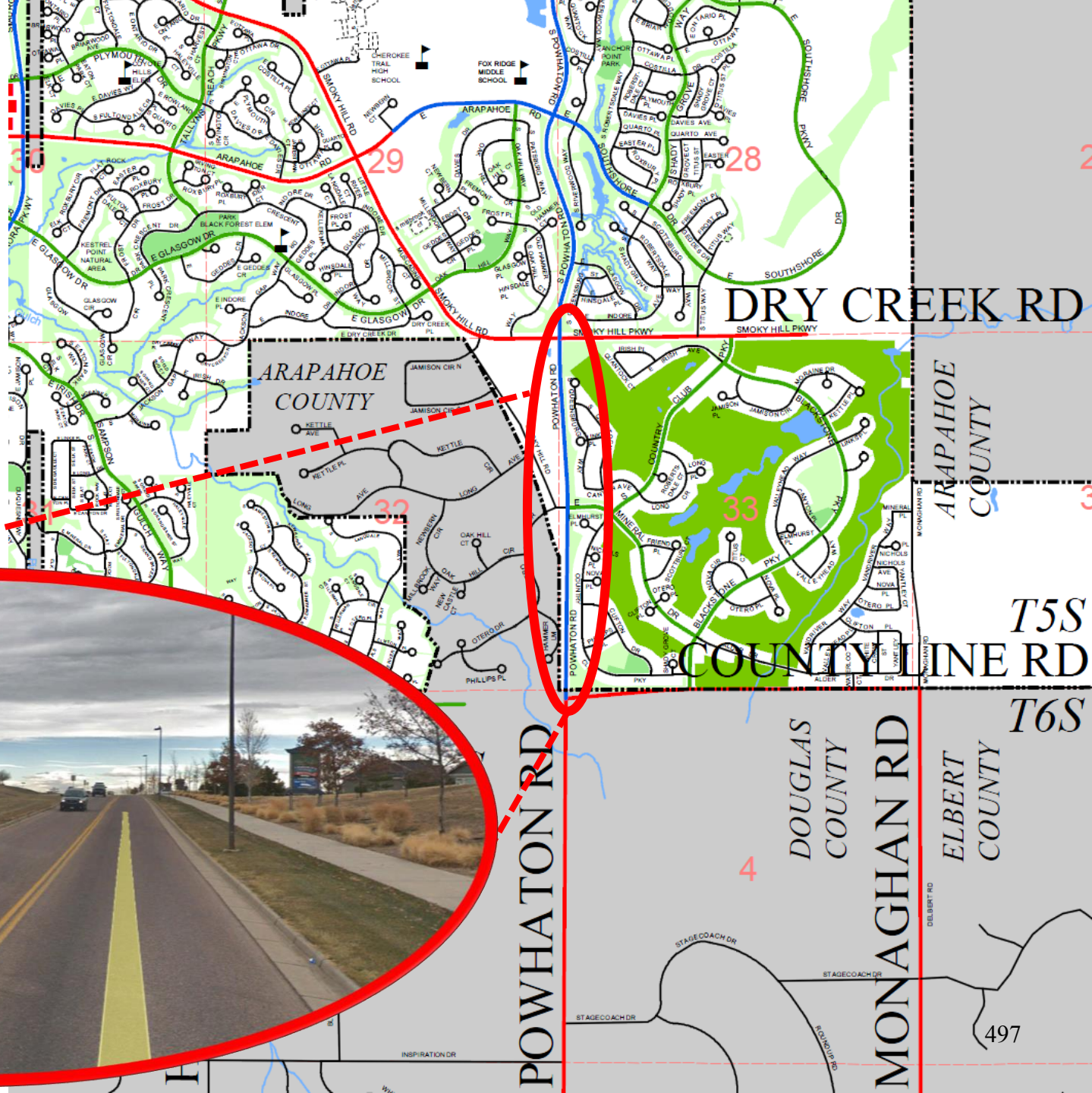
POWHATON ROAD – SMOKY HILL TO COUNTY LINE

Complete improvements of SB lanes fronting County parcels

Capital Cost
\$10,000,000

Operating Cost
\$45,000

Project Benefits
Capacity
Multi-modal
Travel Reliability
Mobility



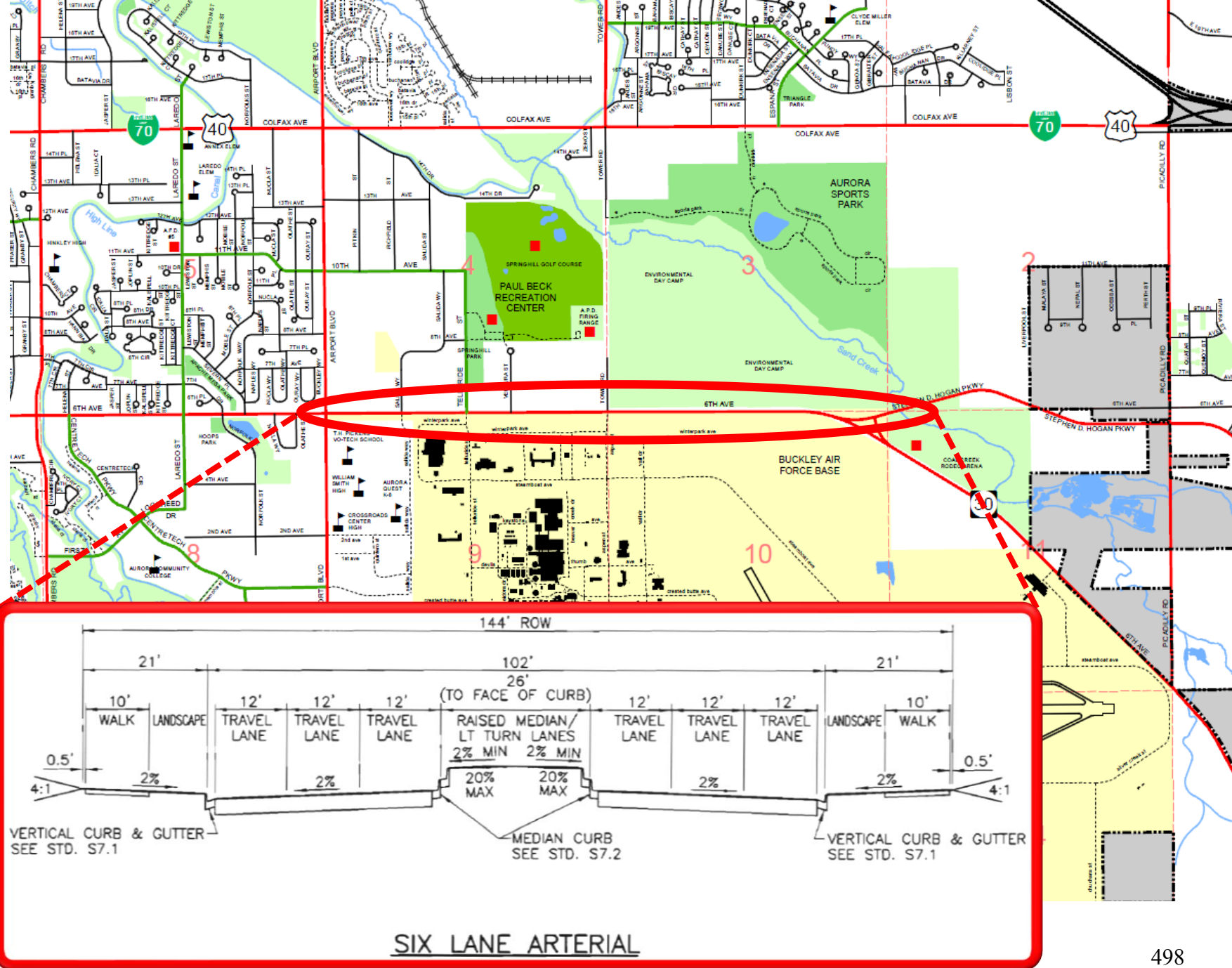
6th Ave / SH30 - Airport to Hogan

Complete 6-lane Arterial Section

Capital Cost
\$40,000,000

Operating Cost
\$14,000

- Project Benefits**
- Safety
 - Capacity
 - Multi-Modal
 - Travel Reliability
 - Mobility
 - Employee Center Access



PICADILLY – HOGAN TO 11TH

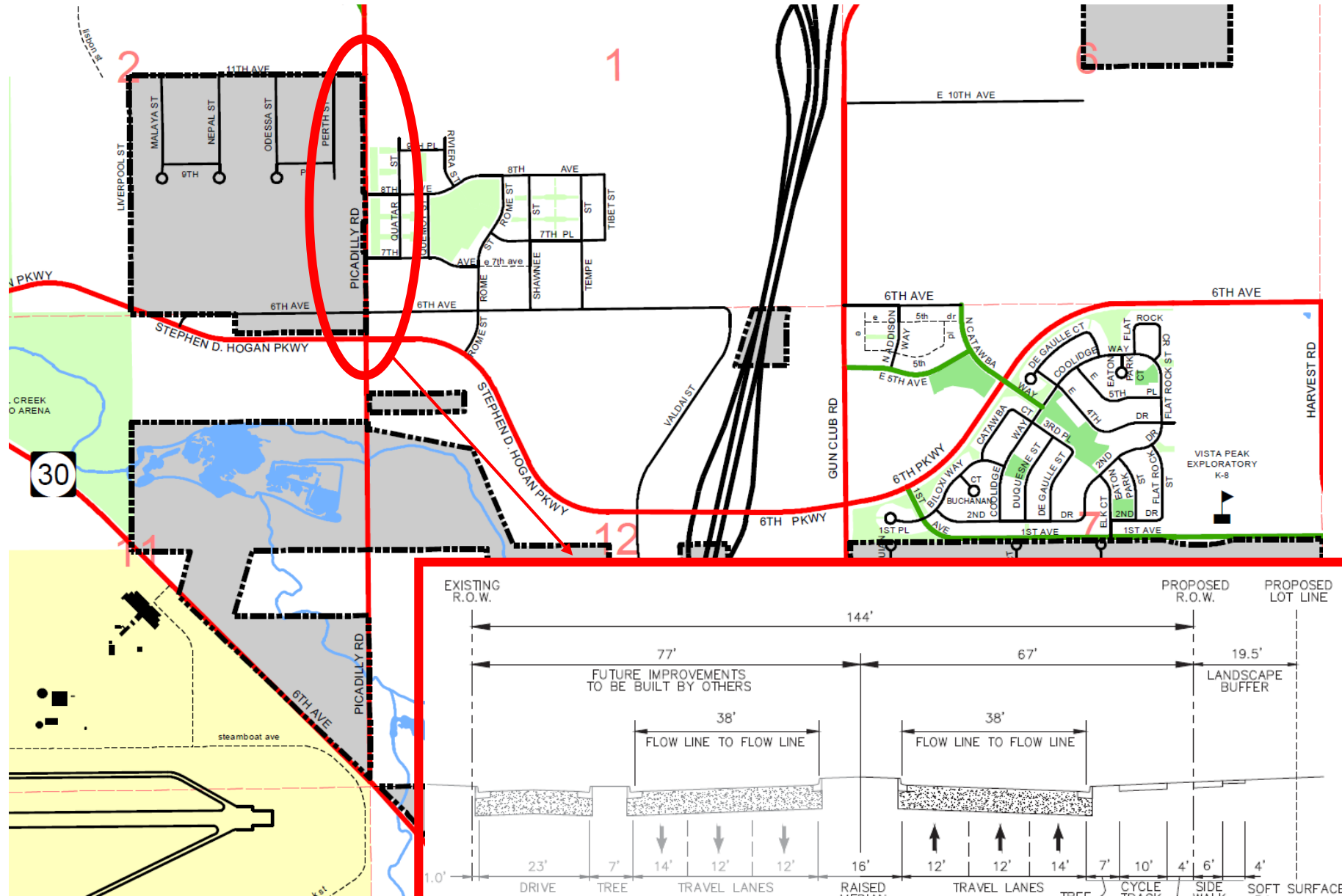
Complete improvements of SB lanes fronting County parcels

Completes City obligation completing Picadilly from Hogan to upcoming I70 Interchange project

Capital Cost
\$3,000,000

Operating Cost
\$5,000

Project Benefits
Safety
Capacity
Multi-Modal
Travel Reliability
Mobility



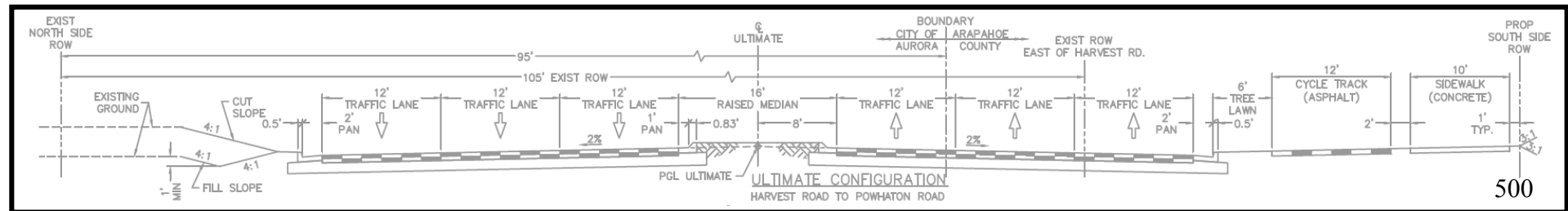
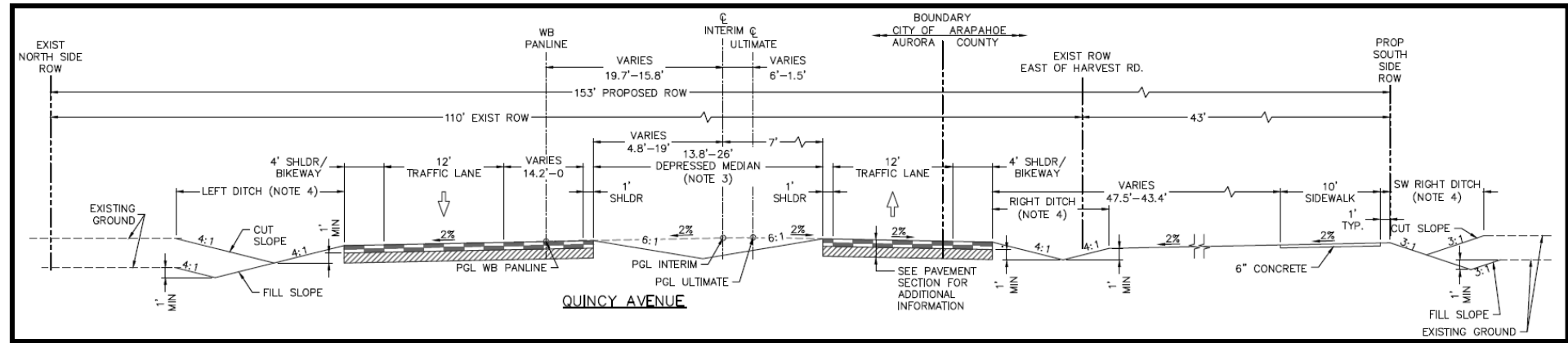
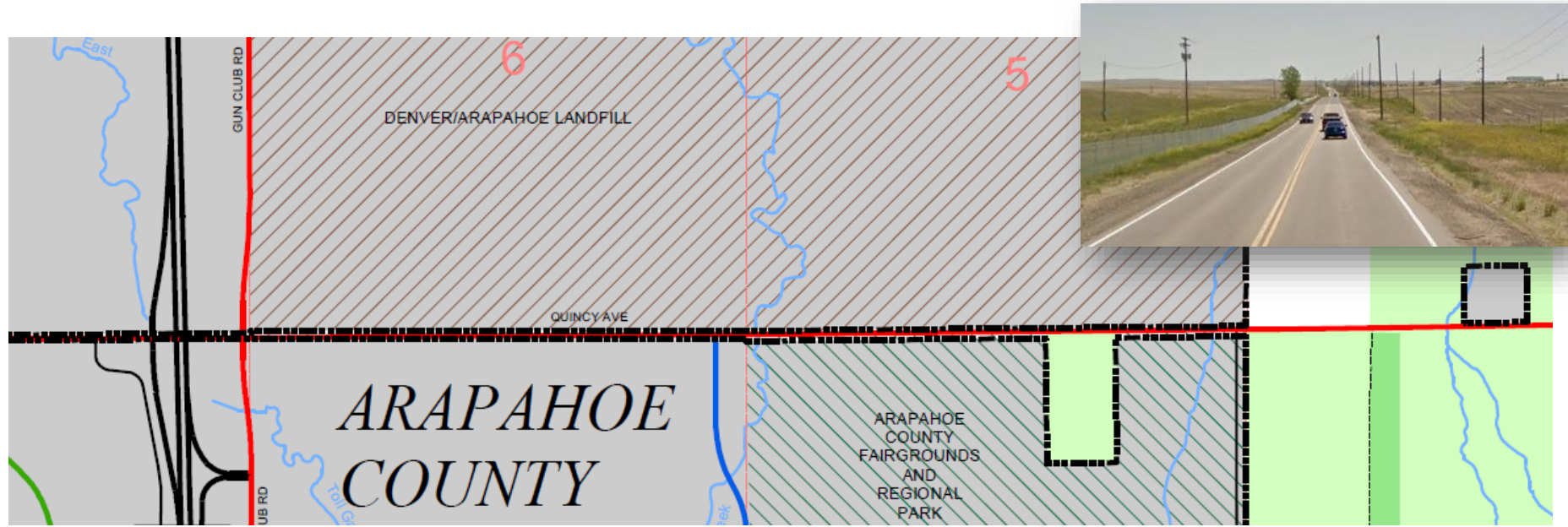
QUINCY – GUN CLUB TO POWHATON

Proposed project would realign Quincy into an interim configuration easily expanded to final section

Capital Cost
\$15,000,000

Operating Cost
\$60,000

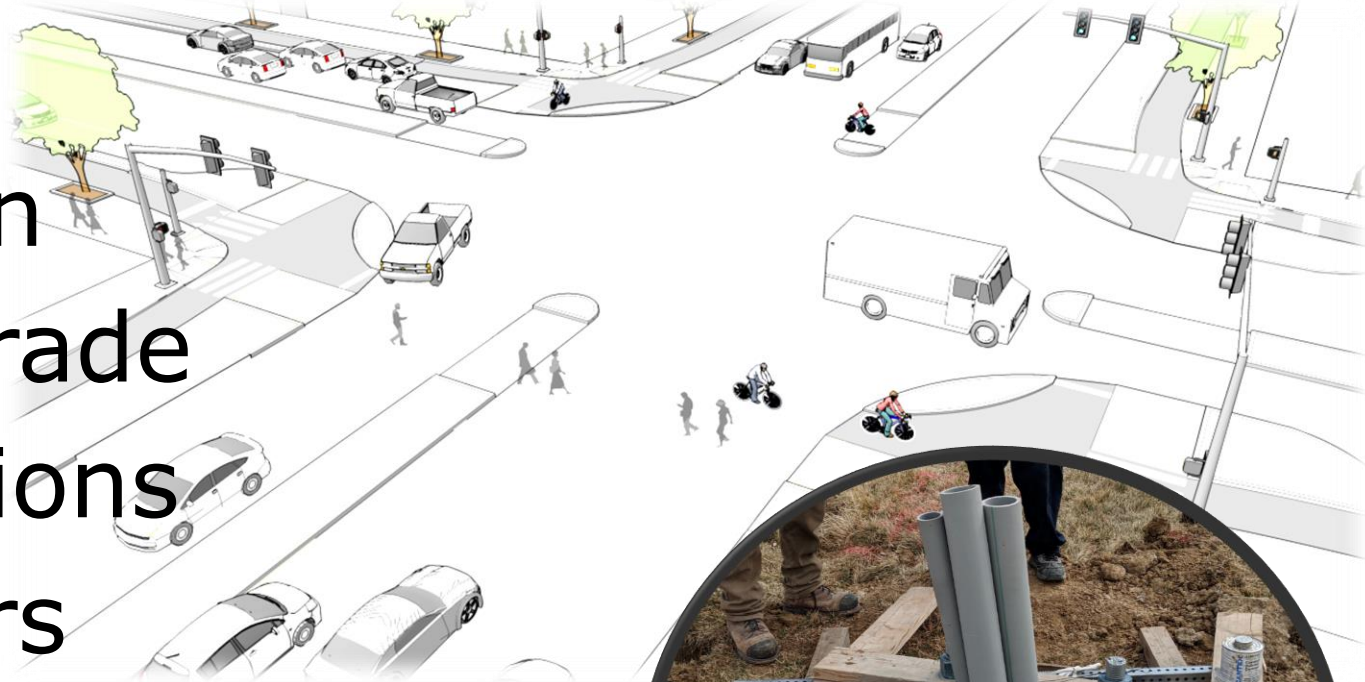
Project Benefits
Safety
Capacity
Multi-Modal
Travel Reliability
Mobility





Top Ranked Projects

1. Signal Construction
2. Signal Server Upgrade
3. Fiber Communications
4. Upgrade Controllers



SIGNAL CONSTRUCTION

Increase annual traffic signal appropriation by \$2,250,000 to allow for construction of signals at warranted locations. This will add 5 signals per year to the traffic signal construction plan.

Capital Cost (one-time)

\$0

Operating Cost (annual capital)

\$2,250,000



SIGNAL SERVER UPGRADE

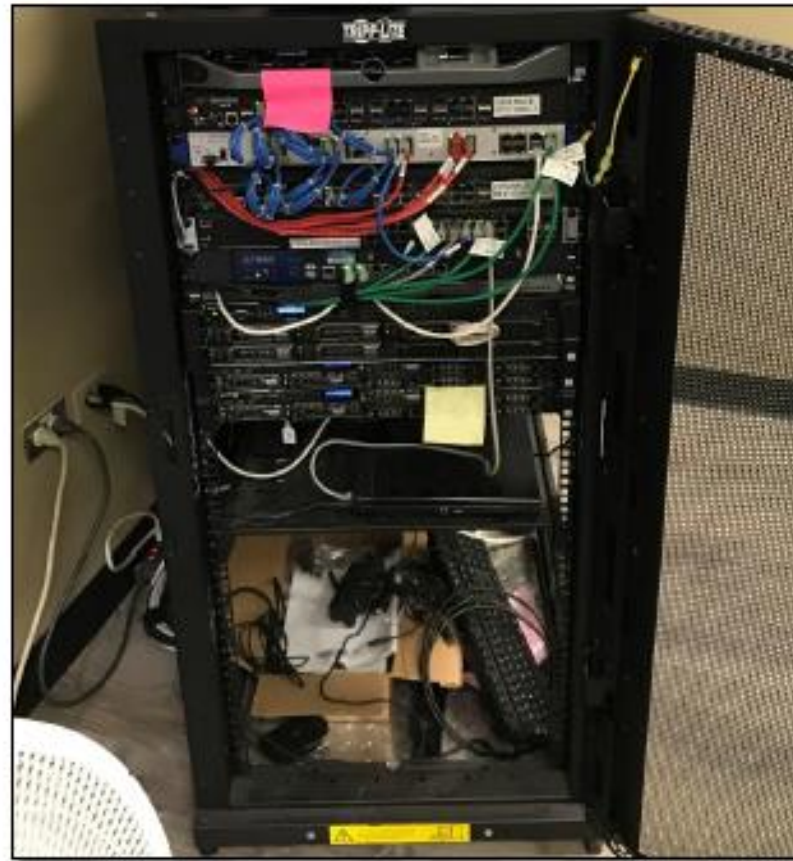
Replace/repair servers that run the central traffic signal system

The signal system is needed to update signal timing remotely and to make sure signals are operating correctly.

Capital Cost
\$550,000

Operating Cost
\$0 within current budget

Project Benefits
Travel Reliability
Improved response times
Decreased delay and associated environmental impacts



FIBER COMMUNICATIONS

Install fiber optic conduit and cable to facilitate the transmission of data for traffic signal operations and control.

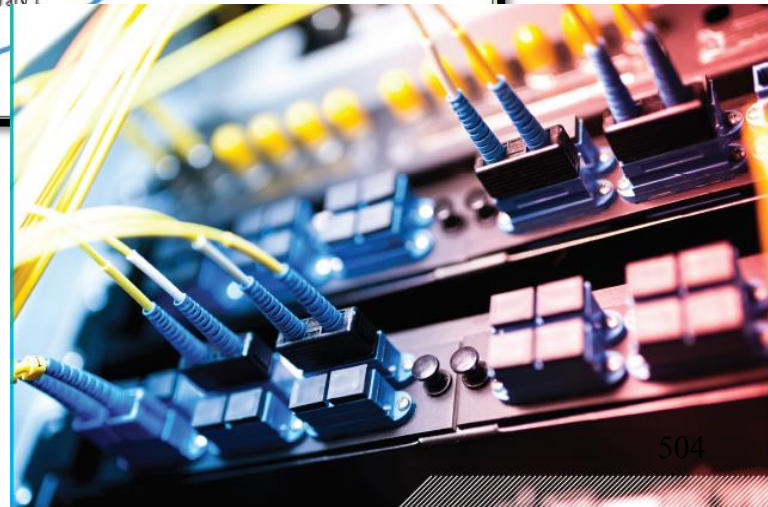
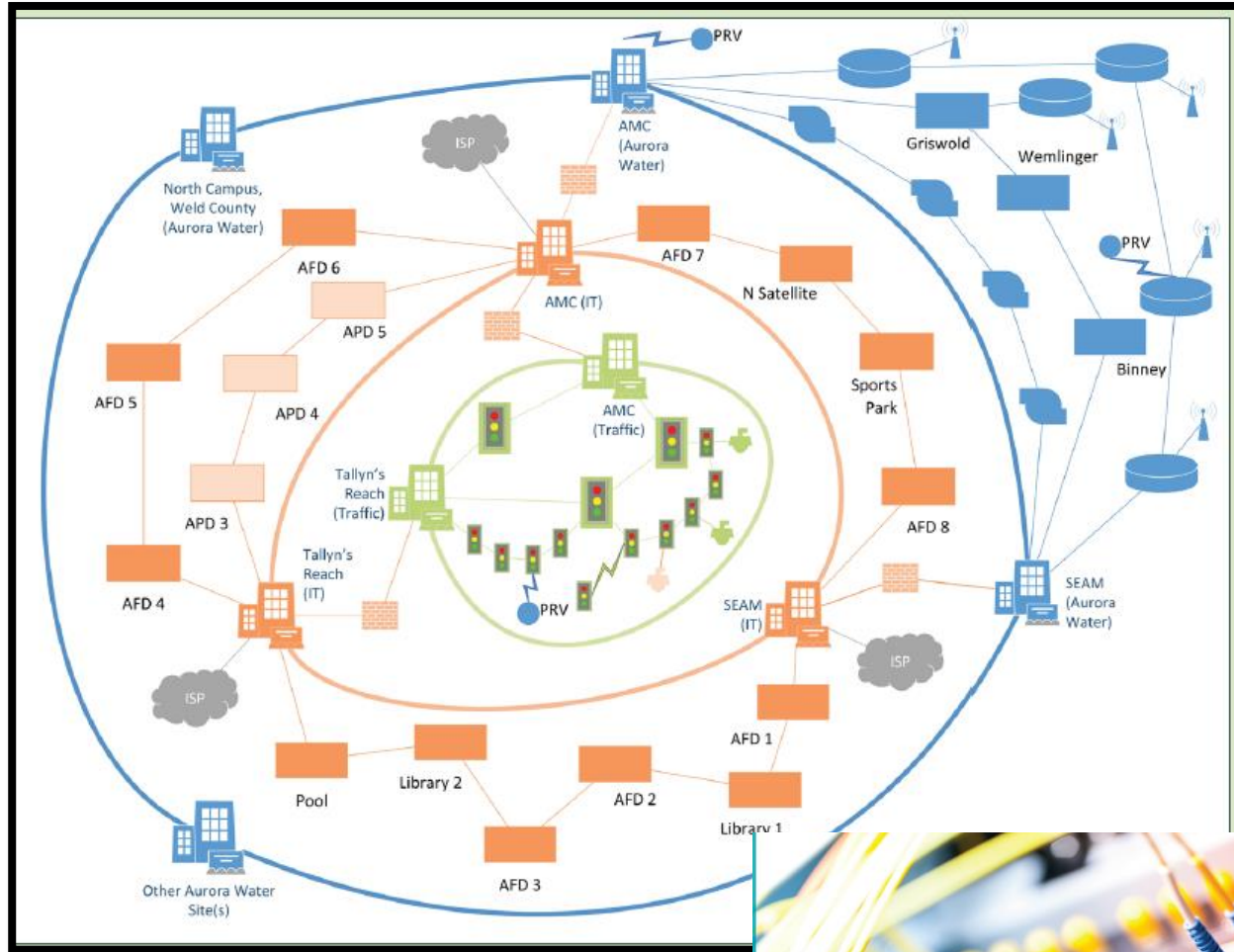
Fiber would also be shared with other City Departments such as IT and Water to connect other City facilities.

The cost below is for about 95 miles of fiber through the City.

Capital Cost (one-time)
\$60,000,000

Operating Cost (annual capital)
\$1,500,000

Project Benefits
Travel Reliability
Improved response times
Decreased delay and associated environmental impacts



UPGRADE TRAFFIC SIGNAL CONTROLLERS, INCLUDING ADAPTIVE CONTROL

Replace traffic signal controllers that are nearing end of life and are not compliant with current standards.

Older controllers cannot be updated remotely using the signal system, do not support Intelligent Traffic System including Smart Cities and Adaptive Traffic Control components.

Capital Cost
\$5,500,000 – Controllers
Confirming adaptive control costs

Operating Cost
Controllers - Within current budget
Confirming adaptive control costs

Project Benefits
Travel Reliability
Improved response times
Decreased delay and associated environmental impacts



ADA SIDEWALK COMPLIANCE

Refresh of City's ADA
Transition Plan starting
soon

Up-front Costs to Address
Immediate Issues on
Arterial Sidewalks

Re-occurring Costs to Fund
Programming Resultant
from Transition Plan Update
& includes collectors and
neighborhood streets

Capital Cost
\$4,700,000

Operating Cost
\$2,000,000



Questions?





CITY OF AURORA

Council Agenda Commentary

Item Title: ARPA Community Engagement Update
Item Initiator: Charise Canales, Community Engagement Manager
Staff Source/Legal Source: Charise Canales, Community Engagement Manager; Tim Joyce, Assistant City Attorney
Outside Speaker: N/A
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: [Click or tap to enter a date or type N/A](#)

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

- Approve Item as proposed at Study Session
 - Information Only
 - Approve Item and Move Forward to Regular Meeting
 - Approve Item as proposed at Regular Meeting
 - Approve Item with Waiver of Reconsideration
- Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

Policy Committee Name: N/A

Policy Committee Date: N/A

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

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

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

Initial presentation on ARPA funding was given to Council by Michael Franks on April 24th, 2021.

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

The federal American Rescue Plan Act (ARPA) was signed into law in March 2021 to provide significant resources to respond to the COVID-19 public health emergency and its economic impacts. The city of Aurora will receive \$65.4 million in one-time direct federal aid, with additional funding provided for programs related to rental and housing assistance. The city will launch a communications and outreach plan to engage the community on how we should allocate the funding, with a focus in three areas: community assistance, infrastructure funding and service preservation. Feedback opportunities will launch the week of Aug. 16.

For the August 16th Study Session, staff will outline the tactics and timeline for collecting community input. That community engagement effort will continue through August and September. Feedback results will be compiled and shared with the Mayor and City Council at the October 4th Study Session. The October 4th Study Session will focus on three areas:

- Review community input and suggestions for how best to use ARPA funds
- Offer staff recommendations for ARPA funds in three areas – community assistance, infrastructure, and service preservation
- Gather Mayor and Council feedback as well as their additional priorities for ARPA funding

QUESTIONS FOR COUNCIL

Are we moving in the right direction for ARPA engagement efforts?

LEGAL COMMENTS

Colo. Const. Article 14, Section 18, Subsection 2(c) permits the City to contract with other governmental units, special districts, private persons, associations, or corporations for the provision of any legally authorized function, service, or facility within or without its boundaries. The City has all powers which are necessary, requisite, or proper for the government and administration of its local and municipal matters. (City Charter Arts. 1-3 and 10-12). Political subdivisions may have interjurisdictional disaster arrangements for disaster preparedness and coordination of response are permitted. (C.R.S. Section 24-33.5-708). Council has the power to prevent and enforce good government, general welfare, order, and security of the City and its inhabitants. (City Charter Art. 3-9). (TJoyce)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: **Type Text Here**

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: **Type Text Here**

City of Aurora

American Rescue Plan Act (ARPA) Community Engagement Update

Council Study Session
August 16, 2021

ARPA Funding & Engagement Summary



Strategy 1: Develop opportunities and platforms for gathering community input that are accessible to all



Strategy 2: Promote feedback opportunities and deliver key messages via broadcast, print, social media, AuroraTV, website and other sources



Strategy 3: Establish a presence at key community events and facilities to gather input



Next Steps





CITY OF AURORA

Late Submission Approval for Agenda Item

Item Title: ARPA Community Engagement Update
Item Initiator: Charise Canales, Community Engagement Manager
Staff Source/Legal Source: Charise Canales, Community Engagement Manager; Tim Joyce
Outside Speaker: Click here to type the name and title (e.x. Jane Smith, Executive Director) of outside speaker(s) N/A
Council Goal: 2012: 6.0--Provide a well-managed and financially strong City

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

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

COUNCIL MEETING DATES FOR LATE SUBMISSION:

Study Session: 8/16/2021

Regular Meeting: Click or tap to enter a date or type N/A N/A

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

Roberto Venegas asked that the item be added to the August 16th study session as our ARPA Project Team will launch our engagement efforts that week to have adequate time to prioritize the ARPA fund allocation.

Signature: Roberto Venegas
Roberto Venegas (Aug 6, 2021 11:51 AM CDT)
Email: rvenegas@auroragov.org

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

Charise Canales
 Agenda Item Initiator Name

Roberto Venegas
 Late Submission Approver Name

Charise Canales 8/6/2021
 Agenda Item Initiator Signature Date

Roberto Venegas 8/6/21
 Late Submission Approver Signature Date



CITY OF AURORA

Council Agenda Item Continuation Page

Item Title: Amendments to the Campaign Finance Ordinance
Item Initiator: Dan Brotzman, City Attorney
Staff Source: Dan Brotzman, City Attorney
Legal Source: Rachel Allen, Client Group Manager, City Attorney's Office
Outside Speaker: Mark Grueskin, Recht Kornfeld PC
Date of Change: 8/9/2021

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

ITEM SUMMARY *(Brief description of changes or updates with documents included.)*

The City Council passed Ordinance 2020-58 in late 2020 that repealed and replaced Section 54-2 and Sections 54-101 to 54-110 of the City Code related to the Financing of Electoral Campaigns. The City was sued in March 2021 challenging Ordinance 2020-58. Arapahoe County District Court Judge granted an injunction on May 28, 2021, preventing the City from enforcing certain provisions of the Ordinance.

These amendments seek to provide clarification and clear direction for candidates running in the upcoming election that will be held on November 2, 2021:

- The 1st attachment includes amendments updated subsequent to the 8/2 Study Session that opposing counsel has agreed upon to address the issues raised in the lawsuit and that the City is enjoined from enforcing.
- The 2nd attachment includes amendments to repeal Ordinance 2020-58 and reenact the prior Code provisions.

ORDINANCE NO. 2021- _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, AMENDING SECTION 54-2 AND SECTIONS 54-101, 54-103, 54-104.5 AND 54-110 OF THE CITY CODE RELATED TO THE FINANCING OF ELECTORAL CAMPAIGNS

WHEREAS, in 2020, the City adopted a comprehensive campaign finance ordinance in order to provide transparency about sources of money that influence municipal elections in the City of Aurora and to prevent corruption and the appearance of corruption in City government; and

WHEREAS, the United States Supreme Court, lower federal courts, and many state courts including the Colorado Supreme Court have previously recognized the critical importance of disclosure in informing voters about the sources of campaign contributions and expenditures as well as the funding of independent expenditures and electioneering communications which advocate the election or defeat of certain candidates; and

WHEREAS, any disclosure about the sources of campaign spending should allow voters to learn about which individuals, businesses, labor unions, non-profit organizations, and special interests seek to influence Aurora's elections; and

WHEREAS, among the many important issues addressed by Aurora's campaign finance ordinance is the need for a dividing line between candidates' campaigns and independent spenders who seek to affect the results in those candidate elections to ensure that contributors and candidates do not evade applicable contribution limits and do not create an environment that allows for corruption and the appearance of corruption in City government; and

WHEREAS, such a dividing line is critically important to ensuring the actual independence of those who pay for electioneering communications and independent expenditures from the candidates whose elections they seek to impact; and

WHEREAS, in light of the upcoming 2021 municipal election, currently pending litigation over Aurora's campaign finance ordinance could create uncertainty for contributors, candidates, political committees, issue committees, independent expenditure committees, and other independent spenders about the legal requirements governing contributions, spending, disclosure, and disclaimers on political advertisements; and

WHEREAS, the City seeks to resolve any such uncertainty in the most timely way possible for this election cycle and all following election cycles by means of an amendment to the 2020 campaign finance ordinance;

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That Section 54-2 of the City Code of the City of Aurora, Colorado, is hereby repealed and replaced by a newly adopted Section 54-2, which shall read as follows:

Sec. 54-2. - Definitions.

- (a) *Active voter* means a registered voter who has not been marked inactive by the clerk and recorder of the voter's county of residence according to §1-2-605(1)(b)(i), C.R.S. Any registered elector whose registration record is marked "inactive" is eligible to vote in any election where registration is required if the elector meets all other requirements.
- (b) *Ballot* means the list of candidates, ballot issues, and ballot questions an eligible elector can vote on in an election.
- (c) *Ballot issue* means a non-recall, citizen-initiated petition or legislatively-referred measure which concerns local government matters arising under section 20 of Article X of the State Constitution, i.e., matters of taxes, debt, and other financial matters. Ballot issues may only be voted on at general elections held each November.
- (d) *Ballot question* means any local government matter involving a citizen-initiated petition, including a petition to recall a public officeholder, or a legislatively-referred measure other than a ballot issue.
- (e) *Ballot title* means the official, short summary of a ballot measure that appears on the ballot.
- (f) *Candidate* means any person who seeks nomination or election to any public office of the City of Aurora that is to be voted on at a municipal election. A person is a candidate if the person has publicly announced an intention to seek election to public office; has circulated, or authorized another person to circulate, nomination petitions on behalf of their candidacy for public office; or has received a contribution or made an expenditure, or authorized another person to receive a contribution or make an expenditure, to support the person's election to public office. As used in the preceding sentence, "publicly announced" means organizing a candidate committee under section 54-103 of this Code or announcing an intention to seek public office through a speech, statement, or other public communication. Unless the context clearly indicates otherwise, "candidate" includes:
 - (1) An incumbent public officeholder, an unsuccessful candidate for public office, or former public officeholder, any of whom have not filed a termination report for their candidate committee with the city clerk. A public officeholder who is the subject of a recall election. For purposes of this provision, a public officeholder becomes the subject of a recall election when the city clerk has authorized the circulation of a petition for recall of the public officeholder under section 54-68(a) of this Code.
 - (2) An agent of a candidate.
- (g) *Circulator* means a person who individually circulates a petition in an attempt to obtain signatures from qualified registered electors.
- (h) *City clerk* means the city clerk or the city clerk's designated representative.
- (i) *Committee* means any the following:
 - (1) *Candidate committee* means a committee organized by or on behalf of a candidate under section 54-103(a).
 - (2) *Independent expenditure committee* means a political committee that only makes independent expenditures and that does not make

- contributions to any candidate committee or to another political committee that makes contributions to any candidate committee.
- (3) *Issue committee* means a person or a group of persons that receives contributions or makes expenditures, or anticipates receiving contributions or making expenditures, in an aggregate amount of one thousand dollars (\$1,000) or more during an election cycle to support or oppose the qualification or passage of a ballot issue or ballot question. "Issue committee" includes a petition representative or other person that receives contributions or makes expenditures to support or oppose the recall of a public officeholder.
- (4) *Political committee* means a person or a group of persons that is organized to support or oppose the nomination or election of one or more candidates and that receives contributions or makes expenditures, or anticipates receiving contributions or making expenditures, in an aggregate amount exceeding four hundred dollars (\$400.00) during an election cycle.
- a. "Political committee" includes an independent expenditure committee, small donor committee, political party, or a separate segregated fund established by a covered entity pursuant to section 54-101(e) of this Code.
 - b. "Political committee" does not include a candidate committee, issue committee, or recall defense committee.
- (5) *Small donor committee* means a political committee that accepts contributions only from natural persons who each contribute no more than fifty dollars (\$50.00) in the aggregate per calendar year.
- (6) *Recall defense committee* means a committee organized under section 54-103(t) of this City Code to oppose the recall of a public officeholder. A recall defense committee is separate from but subject to the same limits and restrictions on contributions as a candidate committee of the public officeholder on whose behalf the recall defense committee is organized.
- (7) Unless the context clearly indicates otherwise, "committee" includes an agent of the committee.
- (j) *Conduit* means a person who transmits a contribution from another person to a committee. "Conduit" does not include the candidate or the treasurer of the committee receiving the contribution, a volunteer fundraiser hosting an event for a committee, or a professional fundraiser if the fund raiser is compensated at the usual and normal charge.
- (k) *Contribution* means a gift, subscription, transfer, loan, payment, advance, or deposit of money or other thing of value made to a person to support or oppose the nomination or election of one (1) or more candidates, or the qualification or passage of a ballot issue or ballot question.
- (1) "Contribution" includes:
 - a. A written contract, promise, or agreement to make a contribution.
 - b. Anything of value given, directly or indirectly, to a recall defense committee to oppose the recall of a public officeholder.

- c. The payment by another person for goods or services rendered to a candidate or committee without charge or at a charge that is less than the usual and normal charge.
 - d. A loan, other than a commercial loan made in the ordinary course of the lender's business, to a candidate or committee, up until the time when the loan is fully paid. An unsecured loan is a contribution from the lender. A secured or guaranteed loan is a contribution from the guarantor or person whose property secures the loan.
 - e. An unpaid financial obligation which is forgiven.
 - f. A contribution in kind.
 - g. A payment or transfer of money or other thing of value received by a committee from another committee.
 - h. A coordinated expenditure.
- (2) "Contribution" does not include:
- a. Services provided without compensation by individuals volunteering their time on behalf of a committee.
 - b. Costs associated with the establishment, administration, and solicitation of contributions for a separate segregated fund established by a covered entity under section 54-101(e) of this Code.
 - c. Payment of compensation for legal and accounting services rendered to a committee if the person paying for the services is the regular employer or client of the individual rendering the services and the services are solely to ensure compliance with the provisions of Article IV of this Chapter.
- (l) *Contribution in kind* means a contribution of goods, services, or other thing of value provided without charge or at a charge that is less than the usual and normal charge. Examples of such goods or services include, but are not limited to, securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists.
- (1) If goods or services are provided at less than the usual and normal charge, the amount of the contribution in kind is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount, if any, charged to the recipient.
 - (2) "Contribution in-kind" does not include an endorsement of a candidate or an issue by any person.
- (m) *Coordinated election* means an election where more than one political subdivision with overlapping boundaries or some electors in common holds an election on the same day, and the eligible electors are all registered electors. The county clerk and recorder is the coordinated election official who conducts the election on behalf of the political subdivisions.

(n) *Coordinated expenditure* means any of the following:

- (1) Payment for a public communication that republishes, disseminates, or distributes, in whole or part, any video, audio, written, graphic, or other form of campaign material, created or prepared by a candidate or **candidate** committee, unless the payment is made by the candidate or **candidate** committee that created or prepared the material, or the republished material is used to oppose the candidate or **candidate** committee that created or prepared the material.
- (2) An expenditure or electioneering communication made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or **candidate** committee **to support or oppose, or to influence voters about, that candidate or any other candidate who seeks election to that same office during that same election cycle.** An expenditure or electioneering communication is made in cooperation, consultation, or concert with, or at the request or suggestion of, a candidate or candidate committee under any of the following conditions:
 - a. The expenditure or electioneering communication is made according to any expressed or implied agreement with, any general or particular understanding with, or according to any request by or communication with the candidate or **candidate** committee.
 - b. During the election cycle in which the expenditure or electioneering communication is made, the person making the expenditure was directly or indirectly established, maintained, controlled, or principally funded by the candidate or committee, or by an immediate family member of the candidate.
- (3) During the **six months before an individual becomes a candidate and for the remainder of that** election cycle, the candidate or **candidate** committee **actively** solicited funds ~~for, provided nonpublic fundraising information or strategy to, appeared as a speaker or featured guest at a fund raiser for, or gave permission to be featured in fundraising efforts for the person making the expenditure for a person so that such funds would be available to be used for one or more independent expenditures or electioneering communications to support or oppose, or influence voters about, any candidate who seeks election to the office sought by the candidate soliciting such funds; provided, however, that this limitation on solicitations of funds does not apply to that candidate's or candidate committee's solicitation of funds for its own use through an independent expenditure or an electioneering~~ communication.
- (4) ~~The expenditure or electioneering communication is based on nonpublic information about the candidate's or committee's campaign needs or plans that the candidate or committee provided to the person making the expenditure directly or indirectly, such as information about campaign messaging, strategy, fundraising, planned expenditures, or polling data.~~ Communications between the person **making the expenditure or electioneering**

communication and the candidate or **candidate** committee only to discuss with the candidate the person's **or the candidate's** position on a policy matter or whether the person will endorse the candidate, ~~and that include no nonpublic information about the candidate's or committee's campaign needs or plans;~~ do not result in a coordinated expenditure under this paragraph.

(5) ~~During the election cycle in which the expenditure or electioneering communication is made, the~~ **A coordinated expenditure does not result if a person, making the expenditure or electioneering communication, has employed or otherwise retained the services, other than of a provider of accounting or legal services as long as that provider only delivers those professional services that are within the scope of the legal or accounting professions.,** ~~of a person who at any prior point in the election cycle met one or more of the following conditions:~~

~~e. Had executive or managerial authority for the candidate or committee, whether paid or unpaid.~~

~~d. Was authorized to raise or expend funds for the candidate or committee and who had nonpublic information from the candidate or committee about the campaign's plans or needs.~~

~~e. Provided the candidate or committee with professional services, other than accounting or legal services, related to campaign or fundraising strategy.~~

(o) *Corporation* means a domestic corporation incorporated under and subject to the "Colorado Business Corporation Act," Articles 101 to 117 of Title 7, C.R.S., a domestic nonprofit corporation incorporated under and subject to the "Colorado Revised Nonprofit Corporation Act," Articles 121 to 137 of Title 7, C.R.S., or any corporation incorporated under and subject to the laws of another state. For purposes of this Article, "domestic corporation" means a for-profit or nonprofit corporation incorporated under and subject to the laws of the State of Colorado, and "foreign corporation" means a corporation incorporated under and subject to the laws of another state or foreign country. For purposes of this Article, "corporation" includes the parent of a subsidiary corporation or any subsidiaries of the parent. "Subsidiary" means a business entity of which more than half of its stock is owned by another entity or person, or a business entity of which a majority interest is controlled by another person or entity.

(p) *Councilmember* means a duly elected member of the governing body of the municipality. Councilmember will also include the office of mayor unless specifically noted otherwise.

(q) *Covered entity* means any of the following:

(1) An organization or enterprise operated for profit, including a corporation, association, proprietorship, firm, partnership, business trust, holding company, limited liability company, limited liability partnership, or similar legal entity through which business is conducted.

(2) A labor organization.

(3) An organization or corporation that is tax-exempt under section 501(c) of

the Internal Revenue Code of 1986.

- (4) A political organization that is tax-exempt under section 527 of the Internal Revenue Code of 1986 and that is primarily operated for purposes other than to support or oppose the nomination or election of one (1) or more candidates, or the qualification or passage of a ballot issue or ballot question.
- (r) *Designated election official* means the city clerk or other person contracting for or engaged in the performance of election duties as required by this Code.
- (s) *Donation* means a payment, transfer, loan, pledge, gift, advance of money, or other thing of value made to an independent spender.
- (1) "Donation" does not include:
- a. A payment received by a person in a commercial transaction in the regular course and scope of the person's business, trade, or investments.
 - b. Membership dues or fees paid to an organization by its members to the extent the dues or fees do not exceed five thousand dollars (\$5,000) per member in a calendar year.
 - c. A payment or transfer of money or other thing of value made by a person if the person prohibited the recipient of the payment or transfer from directly or indirectly using the transferred money or thing of value for independent expenditures or electioneering communications, and the recipient agreed in writing to follow the prohibition and deposited the transferred money or thing of value in an account that is segregated from other funds directly or indirectly used for independent expenditures or electioneering communications.
- (t) *Donor* means a person that makes a donation to an independent spender.
- (u) *Election cycle* means one of the following:
- (1) The period of time beginning thirty-one days following a general election for the particular office and ending thirty days following the next general election for that office.
 - (2) The period of time beginning when petitions are approved for a recall election and ending thirty days following the termination of the recall election, either by election, failure to collect sufficient signatures for recall petitions, or resignation of the incumbent who is the subject of the recall.
- (v) *Electioneering communication* means
- (1) A public communication that meets all of the following conditions:
 - a. Refers to a clearly identified candidate, ~~ballot issue, or ballot question~~.
 - b. Is distributed within one hundred twenty (120) days of a municipal election in which the candidate, ~~ballot issue, or ballot question~~ is on the ballot.
 - c. Can be received by members of the constituency eligible to vote for the candidate, ~~ballot issue, or ballot question~~.
 - (2) "Electioneering communication" does not include:
 - a. A news story, editorial, or commentary distributed by a broadcasting

station, including a cable television operator, programmer, or producer, or satellite television or radio provider, newspaper, magazine, website, or other periodical publication, including an online or electronic publication, that is not owned or controlled by a candidate or committee.

- b. A communication made by a person, other than a candidate or committee, that proposes a commercial transaction in the regular course and scope of the person's business or trade.
- c. A communication that constitutes a candidate debate or forum, or communication that solely promotes a candidate debate or forum made by the sponsor of such debate or forum.
- d. A membership communication.

(3) An electioneering communication is made when the actual spending occurs or when there is a contractual agreement requiring such spending, and the amount is determined.

(4) For purposes of this Article,÷

a. ~~"clearly identified candidate" means the candidate's name or nickname is used in the communication; a picture, drawing, or likeness of the candidate appears in the communication, or the identity of the candidate is otherwise apparent from reference in the communication.~~

b. ~~"Clearly identified ballot issue or ballot question" means the number, official title, or popular name of the issue or question is used in the communication; or there is a reference to the subject matter of the issue or question and the communication either states the issue or question is on the ballot or when taken as a whole and in context, makes an unambiguous reference to the issue or question.~~

(w) *Expenditure* means the purchase, payment, distribution, loan, advance, deposit or gift of money or other thing of value made by a person to support or oppose the nomination or election of one (1) or more candidates, or the qualification or passage of a ballot issue or ballot question. An expenditure occurs when the actual payment is made or when there is consideration received, whichever occurs first.

(1) "Expenditure" includes:

- a. A purchase or payment made by a candidate or committee.
- b. A payment, distribution, loan, or advance of any money or anything of value made by a person for the benefit of a candidate or committee that is made with the prior knowledge and consent of the candidate or committee.
- c. A payment or transfer of money or other thing of value made by a committee to another committee.
- d. An independent expenditure.
- e. An electioneering communication made by a committee.

(2) "Expenditure" does not include:

- a. A payment made by a person, other than a committee, in a

- commercial transaction in the regular course and scope of the person's business or trade.
- b. A news story, editorial, or commentary distributed by a broadcasting station, including a cable television operator, programmer, or producer, or satellite television or radio provider, newspaper, magazine, website, or other periodical publication, including an online or electronic publication, that is not owned or controlled by a candidate or committee.
 - c. A candidate debate or forum, or communication that solely promotes a candidate debate or forum and is made by the sponsor of such debate or forum.
 - d. A payment for nonpartisan voter registration or get-out-the-vote efforts made by a person other than a committee.
 - e. A membership communication.
- (x) *Final determination of sufficiency* means a statement issued by the city clerk or designee following a protest hearing or the expiration of the time allowed for filing a protest, as to whether the petitioners have submitted a sufficient number of valid signatures on a petition.
- (y) *Foreign-influenced corporation* means a corporation or other entity to which any of the following applies:
- (1) A foreign national or foreign owner holds, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of equity or voting shares equal to or greater than five percent (5%) of total equity or outstanding voting shares in the corporation or entity.
 - (2) Two or more foreign nationals or foreign owners hold, own, control, or otherwise have directly or indirectly acquired beneficial ownership of equity or voting shares in total equal to or greater than twenty percent (20%) of the total equity or outstanding voting shares in the corporation or entity.
 - (3) Any foreign national or foreign owner participates in any way, directly or indirectly, in the process of making decisions about the corporation's or entity's contributions, expenditures, or electioneering communications.
- (z) *Foreign national* means a foreign national as defined by 52 U.S.C. § 30121(b), or a foreign-influenced corporation.
- (aa) *Foreign owner* means a corporation or other entity in which a foreign national hold, owns, controls, or otherwise has directly or indirectly acquired beneficial ownership of equity or voting shares equal to or greater than fifty percent (50%) of total equity or outstanding voting shares.
- (bb) *General election* means the statewide election held on the Tuesday following the first Monday of November of each even-numbered year.
- (cc) *Independent expenditure* means an expenditure to support or oppose one (1) or more candidates that is not controlled by or coordinated with any candidate or candidate committee.
- (dd) *Independent spender* means a person, other than a committee registered with the city clerk under section 54-103, that makes an independent expenditure or electioneering communication.

- (ee) *Initial determination of sufficiency* means a statement issued by the city clerk or designee as to whether the petitioners have submitted a sufficient number of valid signatures on a petition.
- (ft) *Initiative* means the right of registered electors to originate legally permissible municipal legislation by obtaining signatures on a petition resulting in the enactment of an ordinance by the city council or in a vote by the general electorate.
- (gg) *Labor organization* means an organization of any kind, or an agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.
- (hh) *Membership communication* means a communication made by an organization, including a covered entity, that is limited in circulation to principal owners, members, stockholders, or executive or administrative employees of the organization, unless the organization is organized to support or oppose the nomination or election of one or more candidates or the qualification or passage of a ballot issue or ballot question.
- (1) "Membership communication" does not include a public communication or a communication that is distributed to persons who are not principal owners, members, stockholders, or executive or administrative personnel of the organization making the communication.
 - (2) For purposes of this Article:
 - a. "Member" means a person who, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote directly or indirectly for the election of a director or officer of the organization, or on the disposition of all or substantially all of the assets of the organization, or on a merger or dissolution of the organization; or any person who is designated in the articles or bylaws of an organization as a member and, pursuant to a specific provision of an organization's articles or bylaws, has the right to vote on changes to the articles or bylaws, or who pays or has paid membership dues or fees in an amount predetermined by the organization so long as the organization is tax-exempt under section 501(c) of the Internal Revenue Code of 1986. A member of a local union or labor organization is considered to be a member of any national or international union or labor organization of which the local union or labor organization is a part and of any federation with which the local, national, or international union or labor organization is affiliated.
 - b. "Stockholder" means a person who has a vested beneficial interest in stock, has the power to direct how that stock will be voted if it is voting stock, and has the right to receive dividends.
 - c. "Executive or administrative personnel" means an individual employed by an organization who is paid on a salary rather than an hourly basis, and who has policy-making, managerial, professional, or supervisory responsibilities. "Executive or administrative personnel" includes an

individual who runs an organization's business, such as officers, executives, and plant, division, and section managers, and individuals following the recognized professions, such as attorneys and engineers.

- (ii) *Municipal election* means a regular municipal election, special municipal election, or recall election.
- (jj) *Non-municipal political organization* means any of the following:
 - (1) A candidate committee, political party, or political committee that is registered and filing reports pursuant to the Fair Campaign Practices Act, §§ 1-45-101 to 1-45-118, C.R.S., or the law of another municipality in the state of Colorado.
 - (2) A political committee or political organization organized under the law of another state.
 - (3) A federal political committee that is registered and filing reports pursuant to the Federal Election Campaign Act of 1971, 52 U.S.C. §§ 30101 to 30146.
- (kk) *Person* means a natural person, partnership, committee, association, firm, corporation, company, labor organization, political party, or other entity or group of persons, however organized.
- (ll) *Petition representative* means the person or persons representing the proponents on all matters affecting a petition.
- (mm) *Petition section* means the stapled or otherwise bound package of documents containing the warning, proposed summary or statement, signature pages, and affidavit of the circulator.
- (nn) *Political advertisement* means any of the following:
 - a. An expenditure or independent expenditure that is public communication.
 - b. An electioneering communication.
 - (1) "Political advertisement" does not include:
 - a. Bumper stickers, pins, buttons, pens, or similar small items upon which a disclaimer statement required by section 54-104.5 cannot be conveniently printed.
 - b. Skywriting, water tower, wearing apparel, or other means of advertising of a nature such that the inclusion of a disclaimer statement required by section 54-104.5 would be impracticable.
- (oo) *Principal owner* means a person that owns or controls ten percent (10%) or more of an entity.
- (pp) *Principal place of operations* means the primary location where the managers, officers, owners, or leadership personnel of an entity direct or control its activities and operations.
- (qq) *Public communication* means a communication to the general public through broadcast, cable, satellite, internet or another digital method, newspaper, magazine, outdoor advertising facility, mass mailing, telephone bank, robocall, or any other form of general public advertising or marketing regardless of medium.

- (rr) *Public office* means the office of mayor or city council of the city of Aurora.
- (ss) *Public officeholder* means a person who holds public office.
- (tt) *Referendum* means the right of registered electors, within 30 days after final publication of an ordinance, and by obtaining signatures on a petition, to require the city council to reconsider the Ordinance or to submit it to the electorate for a vote.
- (nu) *Referred measure* means a ballot issue or ballot question placed on the ballot by the city council for a vote by the eligible electors of the city.
- (vv) *Registered elector* means a resident of the city who is qualified to vote under the constitution and the statutes of the state and who is registered to vote.
- (ww) *Regular municipal election* means an election held on the first Tuesday in November in odd-numbered years.
- (xx) *Special municipal election* means an election held in conjunction with the statewide general election in November of even-numbered years, except as otherwise provided under section 3-7 of the Charter relating to city council vacancies, under section 4-2 of the Charter relating to recall petitions, as provided under section 6-2 of the Charter relating to initiative petitions, and as provided under sections 14-10 and 15-10 of the Charter relating to time frames for collective bargaining issues.
- (yy) *Standalone candidate* means a candidate without a committee who does not accept contributions.
- (zz) *Support or oppose* means any of the following:
 - (1) To expressly advocate for or against the nomination or election of one (1) or more candidates, or the qualification or passage of a ballot issue or ballot question.
 - (2) To aid or promote the success or defeat of a candidate, ballot issue, or ballot question.
- (aaa) *Unexpended campaign funds* means the balance of funds on hand in the campaign account of a committee after a municipal election that is in excess of the amount necessary to pay remaining debts or financial obligations incurred by the committee with respect to the election.
- (bbb) *Volunteer* means any person who freely gives time on behalf of a candidate or a candidate, issue, political, small donor, or independent expenditure committee for purposes of municipal election matters.
- (ccc) *Usual and normal charge* means:
 - (1) For goods, the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution.
 - (2) For services, the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

Section 2. That Section 54-101 of the City Code of the City of Aurora, Colorado, is hereby repealed and replaced by Sections to read as follows:

Sec. 54-101. - Prohibited contributions.

- (a) An issue committee or independent expenditure committee may not make a contribution to a ~~candidate committee~~, recall defense committee, or political committee, other than an independent expenditure committee. A **candidate**, candidate committee, recall defense committee, or political committee, other than an independent expenditure committee, may not solicit or accept a contribution from an issue committee or independent expenditure committee.
- (b) A candidate committee or recall defense committee may not make a contribution to a political committee, issue committee, or **another candidate's** candidate committee or recall defense committee of another candidate. A political committee, issue committee, recall defense committee, or candidate committee may not solicit or accept a contribution from a ~~candidate committee~~ or recall defense committee **or another candidate's candidate committee**.
- (c) **Neither an issue committee nor an independent expenditure committee may make a contribution to a candidate committee.**
- (d) **No contribution is made through a candidate's personal participation or physical presence at an organizational, planning, policy, or strategy meeting or fundraising or other event for any candidate or issue committee or, with the exception of coordinated expenditures described in section 54-2(n)(1), an independent expenditure committee or independent spender that makes an electioneering communication or independent expenditure.**
- (e) **No committee may accept any contribution in cash, currency, or coin that exceeds one hundred dollars.**

Section 3. That Section 54-103(a) of the City Code of the City of Aurora, Colorado, is hereby repealed and replaced to read as follows:

Sec. 54-103. - Requirements for registration and initial filings by candidates and committees;
recordkeeping; campaign accounts.

- (a) Except as provided in subsection (b) of this section, an individual must organize a candidate committee pursuant to subsection (c) upon becoming a candidate under this Article. A candidate may not organize, maintain, or control more than one candidate committee at any time. ~~A candidate may not organize, maintain, control, or serve as an officer or treasurer of a political committee or issue committee.~~
- (b) A standalone candidate must, within five (5) business days of becoming a candidate, submit an affidavit to the city clerk certifying that the candidate has reviewed and is familiar with the requirements of this Chapter [Chapter 54]. If a standalone candidate subsequently accepts a contribution at any point in the election cycle, the candidate must organize a candidate committee within five (5) business days pursuant to this section.

- (c) A committee must, within five (5) business days of becoming a candidate committee, issue committee, or political committee under this Article, do all of the following:
 - (1) Appoint an individual as its treasurer. A candidate may serve as the treasurer of the candidate's own candidate committee if no other individual is appointed treasurer. In the event that the treasurer of a committee is vacated for any reason, the committee must promptly appoint a new treasurer, who must file the affidavit required under paragraph (7) of subsection (d) of this section with the city clerk within ten (10) business days of the vacancy by the prior treasurer.
 - (2) Open or designate a bank account with a financial institution in the state of Colorado to serve as its campaign account, which must include the full name of the committee in the title of the account.
 - (3) File a registration statement with the city clerk that includes the information required by subsection (d) of this section.
- (d) The registration statement filed by a committee with the city clerk must include:
 - a. The full name and mailing address of the committee; the street address for the principal place of operations of the committee, if different from the mailing address; telephone number for the principal place of operations of the committee; an email address for the committee that is actively monitored; and the URL of the committee's official website, if any.
 - b. The full name, mailing address, telephone number, and email address of the treasurer of the committee.
 - c. The full name of any other committee or a non-municipal political organization that is organized, financed, maintained, or controlled by the same person or group of persons as the committee filing the registration statement, and in the case of a non-municipal political organization registered with the Colorado Secretary of State's campaign finance system, the organization's state-assigned Committee ID number.
 - d. A description of the purpose of the committee.
 - i. For a candidate committee, the description must include the full name and public office sought by the candidate on whose behalf the committee is organized.
 - ii. For a political committee, the description must include the full name and public office sought by each candidate the committee is supporting or opposing.
 - iii. For an issue committee, the description must include the official title and number of the ballot issue or ballot question the committee is organized to support or oppose if known, and whether the committee supports or opposes that issue or question.

- iv. For a separate segregated fund sponsored by a covered entity pursuant to section 54-101(e)(2) of this Code, the description must include the full name and the address of the principal place of operations of the sponsoring entity.
 - e. The full name, mailing address, and telephone number of the financial institution with which the committee has opened or designated its campaign account, and the title of the campaign account.
 - f. An affidavit signed by the treasurer of the committee certifying that the treasurer has reviewed and is familiar with the provisions of this chapter, and, in the case of a candidate committee, the registration statement must also include an affidavit from the candidate on whose behalf the committee is organized certifying that the candidate has reviewed and is familiar with the requirements of this chapter.
- (e) The city clerk must review all submitted registration statements within five (5) business days and reject any that do not meet all of the requirements of this section. Rejected registrations may be corrected and resubmitted within five (5) business days.
 - (f) Registration statements must be filed electronically with the city clerk. The city clerk must make all submitted registration statements available to the public online within three (3) business days of determining the statements that meet all requirements of this section.
 - (g) A public officeholder who is the subject of a recall must organize a recall defense committee in accordance with this section before soliciting or accepting a contribution or making an expenditure to oppose the recall. The public officeholder must file a registration statement for the recall defense committee with the city clerk that includes the information described in subsection (d) of this section, appoint a treasurer of the recall defense committee, and designate a bank account with a financial institution in the state of Colorado to serve as the defense committee's campaign account, which must be separate from any other account of the officeholder or the officeholder's campaign committee.
 - (h) If any of the information required in subsections (c) or (d) of this section subsequently changes, the committee must file an amendment to its registration statement within five (5) business days. A committee that has registered under this section in connection with a prior municipal election must file an amended registration statement with the city clerk for each subsequent election cycle until the committee submits a termination report.
 - (i) The treasurer of a committee must preserve copies of all filings and reports required by this article and complete records of all transactions of the committee's campaign account for no less than five (5) years after a

termination report for the committee is submitted to the city clerk or until the final disposition of any complaint or consequent litigation involving the committee, whichever is later. The filings, reports, and records of the committee are subject to inspection at any hearing held under this Article.

- (j) All contributions received by a committee must be deposited in its campaign account within ten (10) days of their receipt. All expenditures made by a committee must be paid from its campaign account. A committee may not deposit a contribution to or make an expenditure from its campaign account without the express authorization of its treasurer or the treasurer's designee. The campaign account must be segregated from any other funds or bank accounts of the person that organized the committee, and funds in the campaign account may not be commingled with the personal funds of any person.
- (k) The treasurer of a committee and the candidate, in the case of a candidate committee, are jointly and severally responsible for all of the following:
 - (1) Filing all statements and reports required by this Article in full and accurate detail.
 - (2) Except as otherwise provided in this Article, all other actions of the committee.

Section 4. Section 4. That Section 54-104 of the City Code of the City of Aurora, Colorado, is hereby repealed and replaced by Sections to read as follows:

Sec. 54-104. - Requirements for reporting contributions and expenditures by committees.

- (a) The treasurer of each committee must prepare and file reports of contributions and expenditures with the city clerk pursuant to this section. The treasurer must attest to the accuracy and completeness of each report filed under this section.
- (b) Each committee must file election-year reports with the city clerk in accordance with the filing schedule specified by this subsection. The initial election-year report due from a committee after filing its registration statement with the city clerk must cover the period that begins on the first day of the election cycle and ends on the closing date of the reporting period in which the committee filed its registration statement. In the case of a committee originally organized in a prior election cycle, the initial election-year report must cover the period that begins on the first day after the last date included in the committee's last semi-annual report and ends on the closing date of the reporting period specified under subparagraph (b)(1)(a) or (b)(2)(a) of this subsection, as applicable. Each subsequent reporting period begins on the first day following the last date included in the prior period and ends five (5) days before the filing deadline for the next report.
 - (1) For a calendar year in which there is a regular municipal election, each committee must file reports that are complete through the last date of each reporting period and due by the dates below. If the due date falls on a weekend or legal holiday, the report is due on the next business day.
 - a. February 5th, complete through January 31st.
 - b. May 5th, complete through April 30th.

- c. August 5th, complete through July 31st.
- d. September 5th, complete through August 31st.
- e. October 5th, complete through September 30th.
- f. The 14th day before the date of the election, complete through the 17th day before the election.
- g. The Friday preceding the date of the election, complete through the Tuesday preceding the election.
- h. December 5th, complete through November 30th.
- i. January 5th of the year after the election, complete through December 31st of the year of the election.

(2) For a calendar year in which there is a special municipal election, each committee must file:

- a. A report for each month after the special election is declared, due by the fifth day of the following month and complete through the last day of the preceding month.
- b. A pre-election report, due on the Friday before the election and complete through the Tuesday before the election.
- c. A post-election report due on the 30th day after the date of the election, complete through the 27th day after the election.
- d. A year-end report on January 5th of the year after the election, complete through December 31st of the year of the election. This report will not be required if the 27th day after the election falls on or after December 31st.

(3) For each non-election year within an election cycle, each committee that has not filed a termination report must file semi-annual reports for non-election years due by July 31st and January 31st. The July 31st report must cover January 1st through June 30th of the non-election year, and the January 31st report must cover July 1st through December 31st of the non-election year.

(c) In addition to other reports required under this section, a committee must file a major contribution report **disclosing any** ~~upon receiving a~~ contribution of one thousand dollars (\$1,000.00) or more **that is received** at any time within ~~thirtysixty (3060)~~ **thirty (30)** days of the date of a municipal election. ~~If the major contribution is received more than fourteen (14) days before the election, the major contribution report must be filed with the city clerk no later than five (5) days after receipt of the contribution. If the date of the receipt of the major contribution is within fourteen (14) days of the election, the~~ **Such** major contribution report must be filed with the city clerk no later than 11:59 PM on the **calendar** day following receipt of the contribution.

(d) A recall defense committee or issue committee that supports or opposes the recall of a public officeholder must file reports of contributions and expenditures with the city clerk within fifteen (15) days of filing its registration statement under section 54-103 and every thirty (30) days thereafter until the date of the recall election has been set, and then thirty (30) days, fourteen (14) days and seven (7) days before the recall election and thirty (30) days following the recall election.

(e) Each report required by this section must include the following information:

- (1) The amount of funds on hand at the beginning of the reporting period, including funds carried over from the current election cycle or a prior election cycle. The

beginning of the reporting period is the date through which the committee's last report was complete.

(2) The total amount of all contributions received by the committee in the reporting period and in the election cycle to date.

(3) The full name and mailing address of each person who has made one or more contributions to the committee during the reporting period; the amount and date of each contribution made by the person in the reporting period; and the aggregate amount of contributions made by the person during the election cycle.

a. If a contributor is a natural person, the report must include the person's occupation and employer.

b. If a contributor is a covered entity or other organization, the report must also include the entity's principal office street address, as filed with the Secretary of State Business Division, or the street address of its principal place of operations, if different from its mailing address.

c. If the covered entity has filed with the Business Division of the Colorado Department of State, then the entity's business name and principal place of operations must match the information filed with that Department.

(4) The total amount of all expenditures made by the committee in the reporting period and in the election cycle to date.

(5) The full name and mailing address of each person to whom an expenditure was made in the reporting period, along with the date, amount, and description of the expenditure, including the specific type of goods or services paid for.

(6) A description of any loan, letter of credit, line of credit, or commercial loan made to the committee during the reporting period, including the full name and address of the lender or person extending the letter of credit, line of credit, or commercial loan; the full name and address of any guarantor or endorsers of the loan, letter of credit, line of credit, or commercial loan; the amount guaranteed; the date and amount of the loan, letter of credit, line of credit, or commercial loan; the balance due on loan, letter of credit, line of credit, or commercial loan; and the terms of interest and the total amount of interest, if any.

(7) A description of any unpaid obligation of five hundred dollars (\$500.00) or more that is thirty days or more overdue, which is not otherwise reported as a contribution, incurred by the committee during the reporting period, including the full name and address of the person to whom the obligation is due; the due date of the obligation; the purpose of the obligation; and the amount past due.

(f) All reports required by this section must be filed electronically with the city clerk. The city clerk must make each report filed under this section available online to the public within three (3) business days of determining the report meets all requirements of this section.

(g) The reporting requirements of this section continue to apply to a committee with outstanding debts or a balance of campaign funds on hand. If the city clerk determines that a committee has no outstanding debts or balance of campaign funds on hand, the committee may file a termination report with the city clerk, provided the committee is not otherwise required by this Article to remain open and active.

(h) A standalone candidate need not register a candidate committee but must file reports

in accordance with this section for all reporting periods in which the candidate makes expenditures.

Section 5. That Section 54-104.5 of the City Code of the City of Aurora, Colorado, is hereby repealed and replaced by Sections to read as follows:

Sec. 54-104.5. - Disclaimers for political advertisements.

- (a) A political advertisement must include a disclaimer, as specified in this section. The disclaimer required for a political advertisement must include:
- (1) The full legal name of the person or committee who paid for the advertisement.
 - (2) **The name of the committee's treasurer and the word, "treasurer."**
~~If the political advertisement is authorized by a candidate, a statement that the advertisement is authorized by the candidate.~~
 - (3) **For independent spenders other than independent expenditure committees, the name of the person filing campaign finance reports for that entity and the words, "filing agent".**
~~If the political advertisement is not authorized by a candidate, a statement that the advertisement is not authorized by any candidate OR CANDIDATE COMMITTEE.~~
- (b) **In addition to complying with subsection (a) of this section regarding disclaimers, a political advertisement, not addressed by subsection (c) of this section, that supports or opposes the election of a candidate or supports or opposes a municipal ballot issue or ballot question, referred measure, or measure for recall of any elected officer, must clearly and conspicuously state it is authorized by the committee that paid for the advertisement.**
- (1) **If the political advertisement is a television, cable, radio, online or digital audio, telephone, or other audio communication, a person must verbalize at the beginning of such advertisement in a clearly audible and intelligible manner the following statement: "This political advertisement is authorized by (name of committee)."**
 - (2) **If the political advertisement is a text or graphic communication, including an online or digital text or graphic communication, such advertisement must conspicuously state in a manner that is clearly readable: "This political advertisement is authorized by (name of committee)."**
- (c) ~~In addition to complying with the requirements of subsection (a) of this section regarding disclaimers, the disclaimer required for a political advertisement that is an independent expenditure or electioneering communication must clearly and conspicuously state that it is not authorized by any candidate or candidate committee. include the full names of the five (5) donors who have made the largest aggregate contributions or donations of one thousand dollars (\$1,000.00) or more during the election cycle to the person who paid for the advertisement.~~
- (1) **If the political advertisement is a television, cable, radio, online or digital audio, telephone, or other audio communication, a person must verbalize at the beginning of such advertisement in a clearly audible and intelligible manner the following statement: "This political advertisement is not authorized by any candidate or candidate committee." If multiple donors have**

~~made aggregate contributions or donations in identical amounts of one thousand dollars (\$1,000.00) or more to the sponsor of a political advertisement during the election cycle, the advertisement must include the full name of the donor or donors who made the contributions or donations most recently.~~

- (2) **If the political advertisement is a text or graphic communication, including an online or digital text or graphic communication, such advertisement must conspicuously state in a manner that is clearly readable by the recipient of the communication: “This political advertisement is not authorized by any candidate or candidate committee.”** ~~If no donor has made aggregate contributions or donations of one thousand dollars (\$1,000.00) or more to the sponsor of a political advertisement during the election cycle, the advertisement may exclude the statement required by this subsection.~~
- (d) A political advertisement disclaimer required by this section must be presented clearly and conspicuously. ~~A disclaimer is not presented clearly and conspicuously if it is difficult to read or hear, or if its placement is easily overlooked.~~
- (1) If the political advertisement is a radio, online or digital audio, telephone, or other audio communication, the disclaimer must be spoken in a clearly audible and intelligible manner at the beginning or end of the communication.
- (2) If the political advertisement is a television, **cable television**, on line or digital video, or other video communication:
- a. The disclaimer must be written and spoken at the beginning or end of the communication.
 - b. The written disclaimer must appear in the communication in a conspicuous size and style.
 - c. The spoken disclaimer must be spoken in a clearly audible and intelligible manner.
- (3) If the political advertisement is a text or graphic communication, including an online or digital text or graphic communication, the disclaimer must be:
- a. Of sufficient size to be clearly readable by the recipient of the communication.
 - b. Contained in a text box set apart from the other contents of the communication.
 - c. Displayed with a reasonable degree of color contrast between the background and the disclaimer statement.
- (e) If the size, format, or display requirements of an online or digital political advertisement make it technologically impossible to include a disclaimer required by this section on the advertisement, the advertisement must clearly and conspicuously provide to the recipients a direct link to immediately obtain the complete disclaimer with minimal effort and without viewing any additional information other than the required disclaimer.

Section 6. That Section 54-110 of the City Code of the City of Aurora, Colorado, is hereby repealed and replaced by Sections to read as follows:

Sec. 54-110. - Municipal elections activity—Limitations on municipal officers and elected officials.

- (a) **Neither the city nor any** ~~city~~ city agency, **city** department, **city** board, **city** division, **city** bureau, **or city** commission, ~~or City Council~~ shall **use any public moneys from any source to** make any contribution in campaigns involving the nomination, retention, election, or recall of any person to any public office, **nor shall any such entity use any public moneys from any source to make any contribution or donation to any other person for the purpose of making any independent expenditure or any electioneering communication**, nor shall any such entity expend any public moneys from any source to urge electors to vote in favor of or against any:
- (1) Municipal ballot issue or ballot question that has been submitted and has had a title fixed;
 - (2) Referred measure; or
 - (3) Measure for the recall of any elected officer, upon the final determination of sufficiency.
- (b) However, **the city as well as any** ~~a~~ city agency, **city** department, **city** board, **city** division, **city** bureau, **or city** commission, ~~or City Council~~ may respond to questions about any such issue described in subsection (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or **the city** council who has policy-making responsibilities may expend not more than \$50.00 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subsection (a).
- (c) Nothing in subsection (a) shall be construed as prohibiting **the city or any** ~~a~~ city agency, **city** department, **city** board, **city** division, **city** bureau, **or city** commission, ~~or council~~ from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the city. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on a municipal election ballot.
- (d) Nothing in subsection (a) shall be construed to prevent an elected official from expressing a personal opinion on any issue.
- (e) Nothing in subsection (a) shall be construed as prohibiting **the city or any** ~~a~~ city agency, **city** department, **city** board, **city** division, **city** bureau, **or city** commission, ~~or City Council~~ from:
- (1) Passing a resolution or taking a position of advocacy on any issue described in subsection (a); or
 - (2) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such city agency, department, board, division, bureau, commission, or council thereof is regularly provided to the public.
- (f) Nothing in subsection (a) shall be construed as prohibiting a member **of the city council, any elected or appointed city official.** ~~or any~~ ~~any~~ employee of **the city or a** city agency, **city** department, **city** board, **city** division, **city** bureau, **or city** commission;

~~or council~~ from expending **one's** personal funds, making contributions **or donations from one's personal funds**, or using personal time to urge electors to vote in favor of or against **any candidate or** any issue described in subsection (a).

(g) Any violation of this section shall be subject to the sanctions authorized in section 54-108.

Section 7. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 8. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 9. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this ____ day of _____, 2021.

PASSED AND ORDERED PUBLISHED this ____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:



RACHEL ALLEN, Client Group Manager

ORDINANCE NO. 2021- _____

A BILL

FOR AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO, REPEALING ORDINANCE 2020-08 AND REENACTING ORDINANCES 2015-65, 2016-35, AND 2019-31 OF THE CITY CODE RELATED TO ELECTIONS AND CAMPAIGN FINANCE

WHEREAS, the City adopted Ordinance 2020-08 a comprehensive campaign finance ordinance; and

WHEREAS, Ordinance 2020-08 was challenged in March 2021 alleging that the Ordinance unconstitutionally restricts candidate speech and association, contains overbroad prohibitions on coordination, and contains unconstitutional disclaimer requirements; and

WHEREAS, Arapahoe County District Court Judge Michaelson granted Plaintiff's Preliminary Injunction on May 28, 2021, which prohibits the City from enforcing portions of the Ordinance; and

WHEREAS, in light of the upcoming 2021 municipal election, currently pending litigation over Aurora's campaign finance ordinance could create uncertainty for contributors, candidates, political committees, issue committees, independent expenditure committees, and other independent spenders about the legal requirements governing contributions, spending, disclosure, and disclaimers on political advertisements; and

WHEREAS, the City seeks to resolve any such uncertainty in the most timely way possible for this election cycle and all following election cycles by means of repealing the 2020 campaign finance ordinance.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. That Section 54-2 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created in Ordinance 2016-35 Section 1 is reenacted, which shall read as follows:

Sec. 54-2. - Definitions.

The following words, terms and phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) *Active voter* means a person who has voted in the last general election.

- (b) *Ballot* means the list of candidates, ballot issues, and ballot questions an eligible elector can vote on at an election.
- (c) *Ballot issue* means a non-recall, citizen-initiated petition or legislatively-referred measure which concerns local government matters arising under section 20 of article X of the state Constitution, i.e., matters of taxes, debt, and other financial matters. Ballot issues can only be voted on at elections held each November.
- (d) *Ballot question* means any local government matter involving a citizen-initiated petition or legislatively-referred measure other than a ballot issue.
- (e) *Ballot title* means the official, short summary of a ballot measure that appears on the ballot.
- (f) *Candidate* means any person who seeks nomination or election to any public office of the city that is to be voted on at the regular municipal election or at any special municipal election. A person is a candidate for election if the person has publicly announced an intention to seek election to public office and thereafter has received a contribution in support of the candidacy. A person remains a candidate as long as the candidate maintains a registered candidate committee, whether the person is serving in office or not.
- (g) *Circulator* means a person who individually circulates a petition in an attempt to obtain signatures from qualified registered electors.
- (h) *City clerk* means the city clerk or his or her designated representative. The city clerk may appoint a hearing officer who shall not be an officer, employee, or agent of the city, and shall not have any relationship with a complainant or defendant participating in the hearing.
- (i) *Committee* means the following, depending upon the context:
 - (1) *Candidate committee* means a person, including the candidate, or persons with the common purpose of receiving contributions and making expenditures under the authority of a candidate. A candidate shall have only one candidate committee.
 - a. An elected and serving municipal office holder may also maintain a candidate committee during such person's term of office and accept contributions, subject to the limitations set forth in article IV of this chapter.
 - b. Any candidate from a prior election shall re-register his candidate committee before running in a subsequent election.
 - (2) *Exploratory committee* means a committee which shall be formed by a potential candidate to receive contributions and make expenditures for the primary purpose of determining whether or not the potential candidate should seek election to any public office of the city. Such committee shall be closed not later than 70 days prior to the regular municipal election for the particular public office to which election is being sought, or upon establishing a candidate committee. At the time of closure, an exploratory committee shall file campaign reports in the same manner as candidate committees.
 - (3) *Issue committee* means two or more persons who are elected, appointed, or chosen, or have associated themselves, for the purpose of accepting contributions and making

expenditures to support or oppose any ballot issue or ballot question of the city or to support or oppose the recall of an elected city official in a recall election.

- (4) *Political committee* means two or more persons who are elected, appointed, or chosen, or have originally associated themselves, for the purpose of making contributions to municipal candidate committees, municipal issue committees, municipal exploratory committees, or for the purpose of making independent expenditures. "Political committee" does not include exploratory committees, issue committees, or candidate committees as otherwise defined in this section.
 - (5) *Independent expenditure committee* means one or more persons that make an independent expenditure in an aggregate amount in excess of \$1,000.00 or that collect in excess of \$1,000.00 from one or more persons for the purpose of making an independent expenditure to support or oppose a candidate.
 - (6) For purposes of this subsection (i) only, "person" means any natural person, partnership, committee, association, corporation, labor organization, political party or other organization or group of persons.
- (j) *Contribution* means:
- (1) The payment, loan, pledge, or advance of money, or guarantee of a loan, made to any candidate committee, issue committee, political committee, or exploratory committee;
 - (2) Any payment made to a third party for the benefit of any candidate committee, issue committee, political committee, or exploratory committee;
 - (3) Anything of value given, directly or indirectly, to a candidate for the purpose of promoting the candidate's nomination, retention, recall, or election;
 - (4) With regard to a contribution for which the contributor receives compensation or consideration of less than equivalent value to such contribution, including, but not limited to, items of perishable or nonpermanent value, goods, supplies, services, or participation in a campaign-related event, an amount equal to the value in excess of such compensation or consideration as determined by the candidate committee, issue committee, exploratory committee or political committee.
 - (5) "Contribution" does not include services provided without compensation by individuals volunteering their time on behalf of a candidate, candidate committee, political committee, issue committee, political party, or independent expenditure committee.
- (k) *Contribution in kind* means:
- (1) The fair market value of any item of real or personal property, other than money, made to or for any candidate committee, issue committee, exploratory committee or political committee for the purpose of influencing the passage or defeat of any issue or the nomination, retention, election, or defeat of any candidate. Personal services are a contribution in kind by the person paying compensation therefor. In determining the value to be placed on contributions in kind, a reasonable estimate or fair market value shall be used.

- (2) "Contribution in kind" does not include an endorsement of a candidate or an issue by any person.
- (3) "Contribution in kind" does not include the payment of compensation for legal and accounting services rendered to a candidate if the person paying for the services is the regular employer of the individual rendering the services and the services are solely for the purpose of ensuring compliance with the provisions of article IV of this chapter.
- (l) *Coordinated election* means an election where more than one political subdivision with overlapping boundaries or the same electors holds an election on the same day and the eligible electors are all registered electors, and the county clerk and recorder is the coordinated election official who conducts the election on behalf of the political subdivisions.
- (m) *Council member* means a duly elected member of the governing body. Council member shall also include the office of mayor, unless specifically noted otherwise.
- (n) *Designated election official* means the city clerk or other person contracting for or engaged in the performance of election duties as required by this Code.
- (o) *Expenditure* means the payment, distribution, loan, or advance of any money by any candidate committee, political committee, issue committee, or exploratory committee.
 - (1) "Expenditure" also includes the payment, distribution, loan, or advance of any money by a person for the benefit of a candidate committee, political committee, issue committee, or exploratory committee that is made with the prior knowledge and consent of an agent of the committee. An expenditure occurs when the actual payment is made or when there is a contractual agreement and the amount is determined
 - (2) For purposes of this subparagraph, the term "expenditure" does not include expenditures made by persons in the regular course and scope of their business or in connection with communications sent solely to their members. The term "expenditure" also does not include a contribution, as defined in subsection (j) of this section.
- (p) *Final determination of sufficiency* means a statement issued by the city clerk or designee following a protest hearing or the expiration of the time allowed for filing a protest, as to whether the petitioners have submitted a sufficient number of valid signatures on a petition.
- (q) *General election* means the statewide election held on the Tuesday following the first Monday of November of each even-numbered year.
- (r) *Independent expenditure* means an expenditure that is not controlled by or coordinated with any candidate or agent of such candidate.
- (s) *Initial determination of sufficiency* means a statement issued by the city clerk or designee as to whether the petitioners have submitted a sufficient number of valid signatures on a petition.

- (t) *Initiative* means the right of registered electors to originate legally permissible municipal legislation by obtaining signatures on a petition resulting in enactment of an ordinance by the city council or in a vote by the general electorate.
- (u) *Petition representative* means the person or persons representing the proponents on all matters affecting a petition.
- (v) *Petition section* means the stapled or otherwise bound package of documents containing the warning, proposed summary or statement, signature pages and affidavit of the circulator.
- (w) *Referendum* means the right of registered electors, within 30 days after final publication of an ordinance and by obtaining signatures on a petition, to require the city council to reconsider the ordinance or to submit it to the electorate for a vote.
- (x) *Referred measure* means a ballot issue or ballot question placed on the ballot by the city council for a vote by the eligible electors of the city.
- (y) *Registered elector* means a resident of the city who is qualified to vote under the constitution and the statutes of the state and who is registered to vote.
- (z) *Regular municipal election* means an election which shall be held on the first Tuesday in November in odd-numbered years.
- (aa) *Special municipal election* means an election which shall be held in conjunction with the statewide general election in November of even-numbered years, except as otherwise provided under section 4-2 of the Charter relating to recall petitions, as provided under section 6-2 of the Charter relating to initiative petitions, and as provided under sections 14-10 and 15-10 of the Charter relating to timeframes for collective bargaining issues.
- (bb) *Unexpended campaign contributions* means the balance of funds on hand in any committee at the end of an election, less the amount of all unpaid monetary obligations incurred prior to the election.
- (cc) *Volunteer* means any person who freely gives of his or her time on behalf of a candidate or candidate, issue, political, or exploratory committee for purposes of municipal election matters.

Section 2. That Section 54-101 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created in Ordinance 2015-65 is reenacted to read as follows:

Sec. 54-101. - Prohibited contributions.

- (a) No candidate committee shall make a contribution or contribution in kind to or accept a contribution or contribution in kind from a candidate committee of another candidate for municipal office.
- (b) No candidate committee, issue committee, political committee, or exploratory committee shall accept contributions from any natural person who is not a citizen of the United States, from a foreign government, or from any foreign corporation that does not have authority to transact business in this state pursuant to art. 115 of tit. 7, C.R.S.

- (c) No candidate committee, political committee, issue committee or exploratory committee shall accept a contribution, or make an expenditure, in currency or coin exceeding \$100.00.
- (d) No person shall make a contribution to a candidate committee, issue committee, political committee or exploratory committee with the expectation that some or all of the amounts of such contribution will be reimbursed by another person.

Section 3. That Section 54-102 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created by Ordinance 2015-65 is reenacted to read as follows:

Sec. 54-102. - Unexpended campaign contributions.

- (a) Unexpended campaign contributions to a candidate committee may be:
 - (1) Donated to a charitable organization recognized by the Internal Revenue Service;
 - (2) Returned to the contributors, or retained by the committee for use by the candidate in a subsequent municipal campaign, including a recall election;
 - (3) Contributed to a candidate committee established by the same candidate for a different municipal office;
 - (4) Contributed to an issue committee formed for the purpose of supporting or opposing any legislatively-referred ballot issue or legislatively-referred ballot question of the city.
- (b) In no event shall contributions to a candidate committee be used for personal purposes not reasonably related to supporting the election of the candidate.
- (c) In addition to any use described in subsection (a), a person elected to a public office, while in office, may use unexpended campaign contributions held by the person's candidate committee for any of the following purposes:
 - (1) Voter registration;
 - (2) Political issue education, which includes obtaining information from or providing information to the electorate;
 - (3) Postsecondary educational scholarships;
 - (4) To defray reasonable and necessary expenses related to mailings and similar communications to constituents;
 - (5) Any expenses that are directly related to such person's official duties as an elected official, including, but not limited to, expenses for the purchase or lease of office equipment and supplies, room rental for public meetings, necessary travel and lodging expenses for legislative education such as seminars, conferences, and meetings on legislative issues, and telephone expenses.
- (d) Unexpended campaign contributions to an issue committee may be donated to any charitable organization recognized by the Internal Revenue Service or returned to the contributors.

- (e) Unexpended campaign contributions to an exploratory committee shall be either:
 - (1) If the person for whom the exploratory committee was opened decides to establish a candidate committee, funds from a person's exploratory committee may be transferred to a candidate committee for the same office; or
 - (2) If the person for whom the exploratory committee was opened decides not to establish a candidate committee (i.e., does not participate in the election), then the provisions regarding the unexpended campaign contributions to a candidate committee will apply to any unexpended campaign contributions from the exploratory committee.

Section 4. That Section 54-103 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created in Ordinance 2016-35 Section 8 is reenacted to read as follows:

Sec. 54-103. - Requirements for registration and initial filings by candidate committees.

- (a) *Candidate affidavit.* When any individual becomes a candidate, such individual shall certify, by affidavit filed with the city clerk within ten days, that the candidate is familiar with the provisions of this section.
- (b) *Candidate, issue, political, exploratory, and independent expenditure committees.* All candidate committees, issue committees, political committees, exploratory committees and independent expenditure committees shall register with the city clerk before accepting any contributions or contributions in kind, or before making any expenditures. Registration shall include a statement listing:
 - (1) The committee's full name;
 - (2) A natural person authorized to act as an agent;
 - (3) A street address and telephone number for the principal place of operations; and
 - (4) The purpose or nature of interest of the committee.

Section 5. That Section 54-104 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created in Ordinance 2019-31 is reenacted to read as follows:

Sec. 54-104. - Requirements for reporting contributions and expenditures.

- (a) All contributions received by a candidate committee, issue committee, political committee, exploratory committee, or independent expenditure committee shall be deposited in a financial institution in a separate account whose title shall include the name of the committee.
- (b) All records pertaining to such accounts shall be maintained by the committee until the committee is affirmatively closed by the candidate and a termination report is filed with the city clerk. If a complaint is filed, such records shall be maintained until final

disposition of the complaint and any consequent litigation. such records shall be subject to inspection at any hearing held pursuant to this article.

- (c) All candidate committees, issue committees, political committees and exploratory committees shall report to the city clerk all contributions received, specifically including but not limited to in kind contributions, including the name and address of each person who has contributed \$20.00 or more; all expenditures made; and all obligations entered into by the committee.
- (d) For purposes of complying with the requirements of section 54-105, a political committee shall report only those contributions accepted, expenditures made, and obligations entered into for the purpose of supporting or opposing a municipal ballot issue or a municipal ballot question. Such political committee shall not be required to report donations, membership dues, or any other payments received unless such amounts are used or to be used for the purpose of supporting or opposing a municipal ballot issue or a municipal ballot question.

Section 6. That Section 54-105 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created in Ordinance 2019-31 Section 2 is reenacted to read as follows:

Sec. 54-105. - Requirements for filing campaign reports.

- (a) All candidate, issue, political, and exploratory committees must file reports on the 90th day, on the 60th day, on the 30th day, on the 14th day, on the Friday before, and 30 days after the municipal election.
- (b) In years following the election for which the committee was established, all candidate, issue, political, and exploratory committees shall file such reports annually, on the first day of the month in which the anniversary of the municipal election occurs.
- (c) The reports required by this section shall also include the balance of funds at the beginning of the reporting period, the total contributions received, whether monetary or in kind, the total of expenditures made during the reporting period, and the name and address of the financial institution used by the committee.
- (d) In addition to any report required to be filed with the city clerk under this section, all candidate committees, issue committees, political committees and exploratory committees shall file a report of any contribution or contribution in kind of more than \$1000.00 in the aggregate from any single contributor received at any time within 30 days preceding the date of a municipal election. This report shall be filed with the city clerk no later than five days after receipt of said contribution(s) or contribution(s) in kind.
- (e) Any issue committee whose purpose is the recall of an elected official shall file a statement of organization with the city clerk within ten business days of receiving its first contribution, or contribution in kind. Reports of contributions and expenditures shall be filed with the city clerk within 15 days of the filing of the statement of organization and every 30 days thereafter until the date of the recall election has been set and then 14 days and seven days before the recall election and 30 days following the recall election.

- (f) Any issue committee supporting an incumbent in a recall election shall file reports of contributions, or contribution in kind, and expenditures with the city clerk 14 and seven days before the recall election and 30 days after the recall election.
- (g) A committee shall be considered open and active until such committee is affirmatively closed and a termination report is filed with the city clerk.

Section 7. That Section 54-105.5 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision created in Ordinance 2019-31 Section 3 is reenacted to read as follows:

Sec. 54-105.5. - Independent expenditure committees.

Independent expenditure committees:

- (1) Shall register with the city clerk within two days of making an expenditure totaling more than \$1000.00 or accepting donations for independent expenditures in excess of \$1000.00; and
- (2) May not contribute to candidate committees or coordinate expenditures with candidates; and
- (3) Must itemize all expenditures of more than \$20.00 and all donations of more than \$250.00, including the occupation of the contributor and employer information for contributors giving, in aggregate, \$250.00 or more.
- (4) Reports shall be filed 90, 60, 30, 14 days prior to the municipal election, and on the Friday immediately prior to the date of the municipal election, and 30 days after the date of the municipal election.

Section 8. That Section 54-106 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision is reenacted to read as follows:

Sec. 54-106. - Where and when to file campaign reports.

- (a) Reports required to be filed by this article are timely if received by the city clerk not later than the close of business on the due date. Reports must be filed electronically, or in accordance with the rules and regulations of the city clerk's office. If the reporting day falls on a weekend or legal holiday, the report shall be filed by the close of the next business day.
- (b) Any report which is deemed to be incomplete by the city clerk shall be accepted on a conditional basis and the committee shall be notified as to any deficiencies found. The committee shall have seven business days from receipt of such notice to file an addendum that cures the deficiencies.
- (c) Reports required to be filed by this article are public records and shall be open to inspection by the public during regular business hours.

Section 9. That Section 54-107 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision is reenacted to read as follows:

Sec. 54-107. - Hearing on campaign finance violations.

- (a) Any person who believes that a violation of this article has occurred may file a written complaint with the city clerk no later than 60 days after the date of the alleged violation. The city clerk shall determine if probable cause exists to take further action upon the complaint. If such a determination is made, the city clerk shall send notice to the affected party ("defendant"), and thereafter shall appoint a hearing officer who shall not be an officer, employee, or agent of the city, and shall not have any relationship with the complainant or defendant. The city clerk shall fix a date for the hearing, which shall be concluded no later than 60 days from the date the written complaint was filed.
- (b) The defendant and the city shall present evidence to such hearing officer in the form of testimony, documents, rebuttal testimony, and opening and closing statements. There shall be no cross examination. The hearing officer shall be entitled to examine any witness and request the submission of additional evidence and arguments.

Section 10. That Section 54-108 of the City Code of the City of Aurora, Colorado, is hereby repealed and reenact Ordinance 2016-35 Section 12 to read as follows:

Sec. 54-108. - Sanctions.

- (a) In accordance with the process in section 54-107, a hearing officer shall determine by a preponderance of the evidence if a violation of this article has been committed. Upon a finding against a defendant, the hearing officer shall then submit written findings of fact, and recommendations for sanctions to the mayor and city council. The city council shall then make a final determination as to any sanction that may be imposed.
- (b) The city clerk, after proper notification by accountable mail shall impose a penalty of \$50.00 per day for each day that a statement or other information required to be filed by this article is not filed by the close of business on the day due. If the penalty is not paid within 30 days of demand, the matter shall be handled in the procedure specified in section 54-107 and subsection (a) of this section.
- (c) Failure to comply with the provisions of this article shall have no effect on the validity of any election.
- (d) Any individual volunteering his or her time on behalf of a candidate or candidate committee shall be exempt from any liability for a penalty imposed pursuant to this section in any proceeding that is based on an act or omission of such volunteer if:
 - (1) The volunteer was acting in good faith and within the scope of such volunteer's official functions and duties for the candidate or candidate committee; and

- (2) The violation was not caused by willful and intentional misconduct by such volunteer.

Section 11. That Section 54-109 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision is reenacted to read as follows:

Sec. 54-109. - Duties of the city clerk—Enforcement.

- (a) The city clerk shall:
 - (1) Prepare forms and instructions to assist candidates and the public in complying with the reporting requirements of this section;
 - (2) Maintain a filing and indexing system consistent with the purposes of this section;
 - (3) Make the reports and statements filed with the city clerk's office available to the public for inspection and copying no later than the end of the next business day after the date of filing. The city clerk may charge a reasonable fee for providing copies of reports in compliance with city policy. No information copied from such reports shall be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose;
 - (4) Conduct hearings, as provided in section 54-107;
 - (5) Adopt procedures consistent with the purposes of this article;
 - (6) Keep a copy of any report or statement required to be filed by this article in accordance with the municipal records retention schedule.

Section 12. That Section 54-110 of the City Code of the City of Aurora, Colorado, is hereby repealed and the previous provision is reenacted to read as follows:

Sec. 54-110. - Municipal elections activity—Limitations on municipal officers and elected officials.

- (a) No city agency, department, board, division, bureau, commission, or council shall make any contribution in campaigns involving the nomination, retention, election, or recall of any person to any public office, nor shall any such entity expend any public moneys from any source, or make any contributions, to urge electors to vote in favor of or against any:
 - (1) Municipal ballot issue or ballot question that has been submitted and has had a title fixed;
 - (2) Referred measure; or
 - (3) Measure for the recall of any elected officer, upon the final determination of sufficiency.

- (b) However, a city agency, department, board, division, bureau, commission, or council may respond to questions about any such issue described in subsection (a) if the member, employee, or public entity has not solicited the question. A member or employee of any such agency, department, board, division, bureau, commission, or council who has policy-making responsibilities may expend not more than \$50.00 of public moneys in the form of letters, telephone calls, or other activities incidental to expressing his or her opinion on any such issue described in subsection (a).
- (c) Nothing in subsection (a) shall be construed as prohibiting a city agency, department, board, division, bureau, commission, or council from expending public moneys or making contributions to dispense a factual summary, which shall include arguments both for and against the proposal, on any issue of official concern before the electorate in the city. Such summary shall not contain a conclusion or opinion in favor of or against any particular issue. As used herein, an issue of official concern shall be limited to issues that will appear on a municipal election ballot.
- (d) Nothing in subsection (a) shall be construed to prevent an elected official from expressing a personal opinion on any issue.
- (e) Nothing in subsection (a) shall be construed as prohibiting a city agency, department, board, division, bureau, commission, or council from:
 - (1) Passing a resolution or taking a position of advocacy on any issue described in subsection (a); or
 - (2) Reporting the passage of or distributing such resolution through established, customary means, other than paid advertising, by which information about other proceedings of such city agency, department, board, division, bureau, commission, or council thereof is regularly provided to the public.
- (f) Nothing in subsection (a) shall be construed as prohibiting a member or an employee of a city agency, department, board, division, bureau, commission, or council from expending personal funds, making contributions, or using personal time to urge electors to vote in favor of or against any issue described in subsection (a).
- (g) Any violation of this section shall be subject to the sanctions authorized in section 54-108.

Section 13. Severability. The provisions of this Ordinance are hereby declared to be severable. If any section, paragraph, clause, or provision of this Ordinance shall, for any reason, be held to be invalid or unenforceable by a court of competent jurisdiction, the invalidity or unenforceability of such section, paragraph, clause, or provision shall not affect any of the remaining provisions of this Ordinance.

Section 14. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 15. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such

conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2021.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:



RACHEL ALLEN, Client Group Manager



CITY OF AURORA

Council Agenda Commentary

Item Title: Ballot Question Changing the Eligibility for Registered Electors to Run for Office
Item Initiator: Kadee Rodriguez, City Clerk
Staff Source/Legal Source: Kadee Rodriguez, City Clerk/Rachel Allen, Client Group Manager
Outside Speaker: Gerald Dahl
Council Goal: 2012: 1.0--Assure a safe community for people

COUNCIL MEETING DATES:

Study Session: 8/16/2021

Regular Meeting: 8/23/2021

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

- Approve Item as proposed at Study Session
 - Information Only
 - Approve Item and Move Forward to Regular Meeting
 - Approve Item as proposed at Regular Meeting
 - Approve Item with Waiver of Reconsideration
- Why is a waiver needed?[Click or tap here to enter text.](#)

PREVIOUS ACTIONS OR REVIEWS:

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

Policy Committee Date: Click or tap to enter a date or type N/A

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

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

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

On May 27, 2021, the City was sued by a registered elector who desires to run for municipal elected office, she meets all of the qualifications to run for office, except that she was convicted of a felony over 20 years ago. A majority of City Council voted to amend City Code Sec. 54-31 on 1st Reading on August 9, 2021.

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

The City's Charter Section 3–3 and Code Section 54–31 require that to be eligible for office in Aurora, candidates must meet five requirements:

- Registered elector in Aurora
- United States citizen
- Resident of the City for at least a year before the election
- Be 21 years or older before the date of election.
- Have no felony convictions

The Colorado Constitution Article VII, Section 10 provides that while confined in prison, prisoners are not entitled to vote but if they were a qualified elector prior to imprisonment and are released by virtue of pardon or for having served out the full term of imprisonment, the rights of citizenship are returned to them.

This proposed ordinance would codify the provisions of the State Constitution into the Aurora Charter by referring a ballot question to amend the Charter to the November 2, 2021 ballot.

QUESTIONS FOR COUNCIL

Does Council wish to amend the City Charter to allow registered electors with a prior felony conviction to run for office in compliance with the Colorado Constitution Article XII, Section 4 by referring this Charter amendment to the November 2, 2021 ballot?

LEGAL COMMENTS

No person hereafter convicted of embezzlement of public moneys, bribery, perjury, solicitation of bribery, or subornation of perjury, shall be eligible to the general assembly, or capable of holding any office of trust or profit in this state. (Colo. Const. art. XII, § 4). The city council, or board of trustees, or other body in which the legislative powers of any home rule city or town may then be vested, on its own initiative, may submit any measure, charter amendment, or the question whether or not a charter convention shall be called, at any general or special state or municipal election held not less than 30 days after the effective date of the ordinance or resolution submitting such question to the voters. (Colo. Const. art. XX, § 5). Amendments to the Charter shall be proposed and adopted in accordance with the Constitution of the State of Colorado, except as modified by city Code. Nothing herein contained shall be construed as preventing the submission to the people of more than one Charter amendment at any one election. If there is any conflict or inconsistency between amendments voted upon at the same election, and more than one be adopted, then the amendment receiving the largest number of votes shall prevail. (City Charter Art. 1-6). The city council shall have the power to submit any number of Charter amendments to a vote of the registered electors without the receipt of a petition. Charter amendments shall be referred to the registered electors by ordinance. (City Code Sec. 54-149). (Allen)

PUBLIC FINANCIAL IMPACT

YES NO

If yes, explain: Type Text Here

PRIVATE FISCAL IMPACT

Not Applicable Significant Nominal

If Significant or Nominal, explain: Type Text Here

ORDINANCE NO. 2021- _____

A BILL

FOR AN ORDINANCE SUBMITTING TO A VOTE OF THE REGISTERED ELECTORS OF THE CITY OF AURORA, COLORADO, AT THE STATEWIDE GENERAL ELECTION ON NOVEMBER 2, 2021, A PROPOSAL TO AMEND ARTICLE 3-3 OF THE AURORA CHARTER TO CONFORM THE QUALIFICATIONS OF ELECTIVE OFFICERS OF THE CITY WITH THE PROVISIONS OF THE COLORADO CONSTITUTION

WHEREAS, Section 3-3 of the Charter of the City of Aurora establishes the qualifications of elective officers of the City; and

WHEREAS, Article XII, Section 4 of the Colorado Constitution provides that no person convicted of embezzlement of public monies, bribery, perjury, solicitation of bribery, or subornation of perjury shall be capable of holding any office of public trust; and

WHEREAS, elected officers of the City hold offices of public trust within the meaning of Article XII, Section 4 of the Colorado Constitution; and

WHEREAS, the City Council is authorized to refer amendments to the Aurora Charter to the voters pursuant to Article XX Section 5 of the Colorado Constitution, Article 1–6 of the Aurora Charter and Section 54-149 of the City Code; and

WHEREAS, the City Council wishes to refer to the voters at the regular municipal election on November 2, 2021, an amendment to Section 3–3 of the Aurora Charter to conform that Article to the provisions of Article XII, Section 4 of the Colorado Constitution.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AURORA, COLORADO:

Section 1. There is hereby submitted to a vote of the registered electors of the City at the statewide general election to be held November 2, 2021, the question of amending the City Charter regarding the requirements of registered electors eligible to hold municipal office.

Section 2. Ballot question referred and ballot title set. The following ballot question is hereby referred to the voters of the City at the November 2, 2021, municipal election:

“IN ORDER TO CONFORM TO THE REQUIREMENTS OF THE COLORADO CONSTITUTION, SHALL ARTICLE 3–3 OF THE CHARTER OF THE CITY OF AURORA, COLORADO BE AMENDED TO READ AS FOLLOWS:

3-3 QUALIFICATIONS OF ELECTIVE OFFICERS.

EACH COUNCILMEMBER WHEN ELECTED SHALL BE A REGISTERED ELECTOR, SHALL BE A CITIZEN OF THE UNITED STATES OF AMERICA, AND SHALL HAVE RESIDED IN THE CITY OF AURORA FOR AT LEAST ONE YEAR PRIOR TO THE DATE OF THE ELECTION AND SHALL HAVE REACHED THEIR TWENTY-FIRST BIRTHDAY PRIOR TO THE DATE OF THE ELECTION. COUNCILMEMBERS ELECTED FROM WARDS SHALL ALSO BE ONE-YEAR RESIDENTS AND REGISTERED ELECTORS OF THE RESPECTIVE WARDS FROM WHICH THEY WERE ELECTED. A PERSON WHO HAS BEEN CONVICTED OF A ~~FELONY~~—EMBEZZLEMENT OF PUBLIC MONEY, BRIBERY, PERJURY, SOLICITATION OF BRIBERY OR SUBORNATION OF PERJURY SHALL NOT BECOME A CANDIDATE FOR NOR HOLD ELECTIVE OFFICE. NO COUNCILMEMBER SHALL HOLD ANY OTHER ELECTIVE PUBLIC OFFICE NOR BE A SALARIED EMPLOYEE OF THE CITY OF AURORA?

_____ YES

_____ NO”

Section 3. The provisions of this Ordinance, the Charter amendment, and the question authorized hereby are severable. If any portion of this Ordinance, the Charter amendment, or the question are judicially determined to be invalid or unenforceable, such determination shall not affect the remaining provision of such Ordinance, Charter amendment, or question.

Section 4. Pursuant to Section 5-5 of the Charter of the City of Aurora, Colorado, the second publication of this Ordinance shall be by reference, utilizing the ordinance title. Copies of this Ordinance are available at the Office of the City Clerk.

Section 5. Repealer. All orders, resolutions, or ordinances in conflict with this Ordinance or with any of the documents hereby approved, are hereby repealed only to the extent of such conflict. This repealer shall not be construed as reviving any resolution, ordinance, or part thereof, heretofore repealed.

INTRODUCED, READ AND ORDERED PUBLISHED this _____ day of _____, 2021.

PASSED AND ORDERED PUBLISHED this _____ day of _____, 2021.

MIKE COFFMAN, Mayor

ATTEST:

KADEE RODRIGUEZ, City Clerk

APPROVED AS TO FORM:

A handwritten signature in cursive script, appearing to read "Rachel Allen", written over a horizontal line.

RACHEL ALLEN, Client Group Manager



MEMORANDUM

TO: Mayor & Council
 FROM: Daniel L. Brotzman *DLB*
 Jack D. Bajorek *JDB*
 DATE: August 10, 2021
 RE: Charter Amendment Timing

During Attorney Gerald Dahl's recent discussions with the City Council, several members have asked questions regarding the submission of a question to the voters asking to amend the existing felony disqualifier in the City Charter. The purpose of this memorandum is to outline the process and identify potential timing issues with the inclusion of the question with this November's election.

The City Code provides a process for the Council to submit a Charter amendment to the voters, but that process requires the approval of an ordinance to authorize the submission.

City Code Sec. 54-149. - Referral by city council.

The city council shall have the power to submit any number of Charter amendments to a vote of the registered electors without the receipt of a petition. Charter amendments shall be referred to the registered electors **by ordinance**. (emphasis added).

As an ordinance, the process requires consideration and voting at two City Council meetings.

City Charter Art. 5-5. - Procedure of passage.

An ordinance may be introduced as a bill at any regular or special meeting by any member of council. Upon introduction, the title of the proposed ordinance shall be read aloud, and council may set a day and hour for the holding of a public hearing thereon. A bill, before its final passage, shall be presented at one additional meeting of the council, which meeting shall be held no earlier than the seventh day after publication of the bill for an ordinance in its final amended form. After final passage, every ordinance shall again be published by reference or in full as council may determine.

If the ordinance is supported by the required votes at introduction and final passage, there is a thirty-day period prior to the ordinance taking effect.

City Charter Art. 5-4. - Form of ordinance.

...Except as otherwise provided in this Article, all ordinances shall take effect thirty days after publication following final passage.

As part of the coordinated election process with Adams, Arapahoe, and Douglas counties, the City Clerk is required to certify the ballot content to the county clerks no later than 60 days prior to the election. For this year, the last day to submit is September 3rd.

Colo. Rev. Stat. § 1-5-203. Certification of Ballot

(3)(a) No later than sixty days before any election, the designated election official of each political subdivision that intends to conduct an election shall certify the order of the ballot and ballot content. Such certification shall be delivered to the county clerk and recorder of each county that has territory within the

political subdivision if the election is coordinated with the clerk and recorder. The order of the ballot and ballot content shall include the name and office of each candidate for whom a petition has been filed with the designated election official and any ballot issues or ballot questions to be submitted to the eligible electors.

An application of the above requirements to the current calendar is as follows:

August 16, 2021: Ballot question ordinance is considered at Study Session
August 23, 2021: Ballot question ordinance is introduced
August 26, 2021: First publication of ordinance
September 3, 2021: City Clerk required to certify the ballot to the various County Clerks
September 13, 2021: Final reading of ordinance
September 16, 2021: Second publication of ordinance
October 16, 2021: Effective date of ordinance

In anticipation of questions regarding the use of an emergency ordinance to speed the above timeline, the effective date of such an ordinance would move to September 16th, but approval would require a unanimous affirmative vote.

City Charter Art. 5-6. - Emergency ordinances.

Emergency ordinances for the preservation of public property, health, peace and safety shall be approved only by the unanimous vote of the members present. The fact showing such urgency and need shall be specifically stated in the measure itself. No ordinance making a grant of any special privilege, levying taxes, incurring indebtedness, authorizing borrowing money, or fixing rates charged by any city-owned utility shall ever be passed as an emergency measure. An emergency ordinance shall take effect upon publication following final passage.

Conclusion

As the above schedule shows, the City Clerk will be required to certify the ballot prior to the required second reading or the effective date of the ordinance. Additionally, there may be an increase to the estimated costs that were included in the three coordinate election agreements as approved by the Council on August 2nd.

Please feel free to contact me with any questions you have.