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## **1: Meeting Commencement**

- 1A. Pledge of Allegiance
- 1B. Review and Approval of Agenda

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## **2: Petitions and Communications**

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## **3: Councilmember Reports**

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## **4: Public Comment**

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## **5: Reports**

- 5A. 2023 Audit and Review of the Annual Comprehensive Financial Report  
2023 Audit and Review of the Annual Comprehensive Financial Report

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## **6: Consent Items**

- 6A. Approval of Minutes  
Approval of minutes from 7.23 Regular Council Meeting and 7.30 Special Meeting
- 6B. Proposed Resolution Approving an Agreement for Traffic Signal Pole Replacement
  - Resolution No. 2024-91 Citywide Traffic Signal and Street Light Pole Replacement
- 6C. Proposed Resolution Mile High Water License Purchase - Two Tap Requests
  - Resolution No. 2024-98 Approving the Issuance of a Water License to Mile High Water Company
- 6D. Proposed Resolutions US 287/120th Sidepath Infill Construction Agreement
  - Resolution No. 2024-102 Approving Amendment One to the Consulting Agreement with FHU for US287/120th Sidepath Infill Project
  - Resolution No. 2024-103 Approving an Agreement with Norra Concrete for the Construction of the US287/120th Sidepath Infill Project.
- 6E. Proposed Resolution Northmoor Park Playground Construction Agreement
  - Resolution No. 2024-104 Approving an Agreement with Western States Reclamation for the Northmoor Park Playground Replacement.
- 6F. Proposed Resolution HyperFiber Master License Agreement
  - Resolution No. 2024-63 HyperFiber License Agreement
- 6G. Proposed Resolution Intrepid Fiber Master License Agreement
  - Resolution No. 2024-99 Intrepid Fiber Networks Master License Agreement
- 6H. Executive Session Request for Legal Advice Regarding Business Development  
Request to hold executive session for the purpose of obtaining legal advice regarding business development.

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## **7: Action Items**

7A. Public Hearing Charter Ballot Question Ordinances - 2nd Reading

Second reading of six potential ballot questions regarding ordinances.

- Ordinance 2243 - Ballot Question Section 4.3 - Term Limits Info
- Ordinance 2244 - Ballot Question Section 6.4 - Rezone by Resolution
- Ordinance 2245 - Ballot Question Section 6.9 - Publication of Ordinances on Website
- Ordinance 2246 - Ballot Question Chapter IX - Personnel Merit System
- Ordinance 2247 - Ballot Question Chapter X - Legal and Judiciary
- Ordinance 2248 - Ballot Question Section 4.3 - Extending the Mayor's term from 2 to 4 years

7B. Proposed Resolution Potential Ballot Question Regarding the 17th Judicial District DA Term Limits

- Resolution 2024-75 District Attorney Term Limits

7C. Contracted Waste Hauling Ordinance- First Reading

- Ordinance No. 2242 Amending Certain Sections of Title 8 Chapter 4 of the Broomfield Municipal Code to Implement City Contracted Waste Collection Services

7D. Proposed Resolutions regarding Nonprofits Grant Program and Possible Distribution of Additional Funds from Property Tax and Grant Refunds

- Resolution No. 2024-100 Approving use of additional 2024 Department of Human Services nonprofit grant funding to go to Broomfield Community Foundation
- Resolution No. 2024-107 Approving use of additional 2024 Department of Health Services nonprofit grant funding for additional allocation
- Resolution No. 2024-108 Approving the 2024 amended policy on community outlays for public purposes

## 8: Mayor and Councilmember Requests for Future Action

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8A. Councilmember Marsh-Holschen Request for Future Action Regarding RV/Long Term Street Parking

## 9: Adjournment

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The City and County of Broomfield operates without regard to race, color, national origin, ethnicity, citizenship, immigration status, gender, age, sex, sexual orientation, gender identity, gender expression, marital status, source of income, military status, or disability in all programs and activities.

Individuals with disabilities requiring accommodation or persons needing a language interpreter must submit such a request to the City Clerk no later than noon on Thursday prior to the scheduled Council meeting to allow adequate time to make arrangements. Please call 303.438.6332 or TDD 303.465.5411 or write [cityclerk@broomfield.org](mailto:cityclerk@broomfield.org) to make your request.

During the meeting, individuals can click the “CC” button on Live Council meeting video feeds to view closed captioning. Auxiliary hearing aid equipment can be requested on the night of the meeting with our AV team located at the back of the Council Chambers.





## City of Broomfield

### City Council Regular Meeting

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#### 2023 Audit and Review of the Annual Comprehensive Financial Report

2023 Audit and Review of the Annual Comprehensive Financial Report

Meeting	Agenda Group	
Tuesday, August 13, 2024, 6:00 PM	Reports	Item: 5A
Presented By		
Graham Clark, Deputy Director of Finance		
Community Goals		
<input checked="" type="checkbox"/> Financial Sustainability and Resilience		

#### Overview

[View Correspondence](#) and visit BroomfieldVoice.com (link to project page OR remove if not applicable)

Section 12.11 of the Broomfield Home Rule Charter and Colorado state law requires that an independent annual audit be made of all city and county accounts by a Certified Public Accountant. In October 2020, City Council selected RubinBrown LLP (RubinBrown) to perform the independent audit of Broomfield's financial statements. The 2023 financial records were made available for audit review and all audit fieldwork has been completed. The draft 2023 Annual Comprehensive Financial Report accompanies this report.

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#### **Attachments**

[2023 Audit & Review of the Annual Comprehensive Financial Report.pdf](#)

# Summary

[View Correspondence](#)

[Section 12.11](#) of the Broomfield Home Rule Charter and Colorado state law requires that an independent annual audit be made of all city and county accounts by a Certified Public Accountant.

In October 2020, City Council selected RubinBrown LLP (RubinBrown) to perform the independent audit of Broomfield's financial statements.

The 2023 financial records were made available for audit review and all audit fieldwork has been completed. The draft [2023 Annual Comprehensive Financial Report](#) accompanies this report. The auditors have expressed an **unqualified opinion** on the financial statements, and this opinion is included in the Annual Comprehensive Financial Report. This is the highest level of opinion that can be given by an independent external auditor.

In addition to the financial audit, RubinBrown annually provides their Report to Governance document which is an analysis of Broomfield's financial operations and results of the annual audit. The 2023 ViewPoints Report outlines suggestions Broomfield may want to implement regarding internal controls and processes. Staff's response to the auditors' recommendations can be found [here](#).

## Financial Considerations

N/A

## Prior Council or Other Entity Actions

October 6, 2020: City Council approved Resolution No. [2020-199](#), authorizing an agreement between the City and County of Broomfield and RubinBrown LLP to audit Broomfield's financial statements.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

Questions and comments from the City Council are appreciated. The presentation of the 2023 Annual Comprehensive Financial Report is scheduled for the August 13, 2024 Council Meeting.

## Alternatives

N/A





# City of Broomfield

## City Council Regular Meeting

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### Approval of Minutes

Approval of minutes from 7.23 Regular Council Meeting and 7.30 Special Meeting

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Consent Items      Item: 6A
Community Goals	

### Summary

Approval of Minutes for Regular Council Meeting of MONTH DAY, YEAR.

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### Attachments

[Minutes from July 23 Regular Meeting.pdf](#)

[Minutes from July 30 Special Meeting.pdf](#)

## Minutes for the City Council Regular Meeting

One Descombes Dr, Broomfield, CO 80020

July 23, 2024, 6:02 PM - July 23, 2024, 9:59 PM

Break from 8:05-8:15 PM

### Roll Call: *(The following members were in attendance)*

- **Guyleen Castriotta**, Mayor
- **Laurie Anderson**, Ward 4
- **Paloma Delgadillo**, Ward 2
- **Heidi Henkel**, Ward 5
- **Bruce Leslie**, Ward 4 (Remote)
- **Jean Lim**, Ward 3
- **James Marsh-Holschen**, Ward 1
- **Kenny Van Nguyen**, Ward 1
- **Deven Shaff**, Mayor Pro Tem, Ward 3
- **Austin Ward**, Ward 2

### Not Present

- **Todd Cohen**, Ward 5 (Excused)

### Also Present

- **Jennifer Hoffman**, City and County Manager
- **Don Davis**, Deputy City and County Manager
- **Nancy Rodgers**, City and County Attorney
- **Patrick F. Thibault**, Clerk and Recorder Administrator
- Other various department staff

## 1. Meeting Commencement

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1A. Pledge of Allegiance- 6:02 PM

1B. Review and Approval of Agenda- 6:03 PM

## 2. Petitions and Communications

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2A. Child Support Proclamation- 6:03 PM

**2B. Employee Appreciation Proclamation 2024- 6:07 PM****2C. Historic Landmark Board Presentation to Council- 6:14 PM****3. Councilmember Reports**

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**4. Public Comment**

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**5. Reports**

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**6. Consent Items**

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**6A. Approval of Minutes- 6:46 PM****6B. IGAs with school districts for November 5, 2024 General Election- 6:46 PM****6C. First Amendment to Agreement with Runbeck Elections Services, Inc. - 6:46 PM**

Motion to approve the staff reports contained in Consent Items 6A through 6C made by Councilmember Nguyen, and seconded by Councilmember Henkel. Motion passes 9-0.

**7. Action Items**

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**7A. Public Hearing - North Area Buried Water Tanks and Pump Station- 6:49 PM**

Motion to approve Resolution 2024-68 be adopted with revisions to reference the Site Development Plan Amendment dated September 7, 2023, and revisions to the open space dedication to reflect .85 acres and \$73,100 for the payment to the Open Space Fund as required by the September 7, 2023 Site Development Plan Amendment, made by Mayor Pro Tem Shaff and seconded by Councilmember Ward. Motion passes 7-2. Councilmembers Anderson and Henkel vote No.

**7B. The Bay Phase IV CM/GC Construction Agreement- 8:16 PM**

Motion to approve Resolution No. 2024-90 Amendment One to the Construction Management/ General Contactor Agreement for The Bay Phase IV made by Mayor Pro Tem Shaff, and seconded by Councilmember Ward. Motion passes 7-2. Councilmembers Henkel and Marsh-Holschen vote No.

**7C. Public Hearing HUD Annual Action Plan - 9:45 PM**

Motion to approve Resolution 2024-97 Approving 2024 Housing and Urban Development Plan, made by Councilmember Ward and seconded by Councilmember Nguyen. Motion passes 9-0.

**7D. Public Hearing - Rezoning Process Changes and Application Expiration Ordinance - 2nd Reading- 9:51 PM**

Motion to approve Ordinance No. 2232 Rezoning Process Changes and Application Expiration Ordinance, and ordered published by title, made by Councilmember Ward and seconded by Councilmember Nguyen. Motion passes 9-0

**7E. Public Hearing - Family Child Care Ordinance 2nd Reading- 9:55 PM**

Motion to approve Ordinance No. 2233 Amend the Broomfield Municipal Code to Allow Family Child Care Homes, and be published by title, made by Councilmember Ward and seconded by Councilmember Henkel. Motion passes 9-0.

**8. Mayor and Councilmember Requests for Future Action**

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**9. Adjournment**

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## Minutes for the City Council Special Meeting

One Descombes Dr, Broomfield, CO 80020

July 30, 2024, 6:00 PM - July 30, 2024, 10:37 PM

Recess was called 6:24-6:30 PM

Recess was called 8:00-8:10 PM

### Roll Call: *(The following members were in attendance)*

- **Guyleen Castriotta**, Mayor
- **Laurie Anderson**, Ward 4
- **Todd Cohen**, Ward 5 (Remote)
- **Paloma Delgadillo**, Ward 2
- **Heidi Henkel**, Ward 5
- **Bruce Leslie**, Ward 4
- **Jean Lim**, Ward 3
- **James Marsh-Holschen**, Ward 1
- **Kenny Van Nguyen**, Ward 1
- **Deven Shaff**, Mayor Pro Tem, Ward 3 (Remote)
- **Austin Ward**, Ward 2

### Also Present:

- Jennifer Hoffman, City and County Manager
- Don Davis, Deputy City and County Manager
- Nancy Rodgers, City and County Attorney
- Crystal Clemens, City and County Clerk
- Patrick F. Thibault, Clerk and Recorder Administrator
- And various staff members

## 1. Meeting Commencement

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1A. Pledge of Allegiance

1B. Review and Approval of Agenda

## 2. Petitions and Communications

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## 3. Councilmember Reports

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#### **4. Public Comment**

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#### **5. Reports**

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5A. Expense Report for Elected Officials - 2nd Quarter 2024

#### **6. Consent Items**

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6A. BOE Approval of Hearing Officer Recommendations on Property Tax Protest Petitions

6B. Request for Executive Sessions Regarding the City and County Manager's Annual Performance Review

Motion to approve the staff reports contained in Consent Items 6A and 6B made by Councilmember Ward and seconded by Councilmember Henkel. Motion passes 10-0.

#### **7. Action Items**

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7A. Continued - Public Hearing - Summit Classical Academy Portable Building SDP Amendment- 6:30 PM

Motion to approve Resolution 2024-67 Summit Classical Academy Site Development Plan Amendment made by Councilmember Ward and seconded by Councilmember Nguyen.

Motion that Council recess into an Executive Session to get legal advice from the City and County Attorney that would be privileged, made by Mayor Pro Tem Shaff and seconded by Councilmember Anderson. Motion fails 6-4. Councilmembers Marsh-Holschen, Ward, Henkel, and Nguyen vote No.

Motion that Council direct the City and County Attorney to draft findings in support of a denial and continue the application for a decision to a date certain, made by Mayor Pro Tem Shaff and seconded by Councilmember Marsh-Holschen. Motion was tied 5-5; Mayor Castriotta votes No. Motion fails.

Motion to approve Resolution 202-67 Summit Classical Academy Site Development Plan Amendment made by Councilmember Ward and seconded by Councilmember Nguyen. Motion passes 6-4. Mayor Pro Tem Shaff, and Councilmembers Marsh-Holschen, Henkel, and Cohen vote No.

7B. Public Hearing - Vista Pointe PUD Plan Text Amendment and Comprehensive Plan Amendment- 8:11 PM

Motion to approve Resolution No. 2024-96 Vista Pointe Public Unit Development Plan Text Amendment and Comprehensive Plan Amendment, made by Councilmember Leslie and seconded by Councilmember Nguyen. Motion passes 10-0.

**7C. Resolution 2024-76 - Approving a \$2 M Loan from the Housing Development Fund to Ulysses Development Group for the Harvest Hill Development - 8:46 PM**

Motion to approve Resolution No. 2024-76 Loan to Ulysses Development Group for Harvest Hill Development, made by Councilmember Henkel and seconded by Councilmember Nguyen. Motion passes 10-0.

**7D. Proposed Authorization to Apply for "More Housing Now" Grant From Dept. of Local Affairs- 10:05 PM**

Motion to approve Resolution No 2024-111 submission of a grant application for the More Housing Now Grant to support the Harvest Hill development, made by Councilmember Marsh-Holschen and seconded by Councilmember Henkel. Motion passes 10-0.

**7E. Proposed Ordinance 2248 for Potential Charter Change Ballot Question re: Length of Term for a Mayor - First Reading- 10:08 PM**

Motion to approve Ordinance No. 2248 Ballot Question Section 4.3: The Length of the Mayor's Term and published in full, made by Councilmember Delgadillo and seconded by Councilmember Ward. Motion passes 10-0.

**7F. Public Hearing - Mixed Use/TOD and Rezoning Changes 2nd Reading- 10:28 PM**

Motion to approve Ordinance No. 2222 Related to Transit Oriented Development and Mixed Use Rezone Districts, and published by title, made by Councilmember Leslie and seconded by Councilmember Ward. Motion passes 9-0 with Councilmember Cohen excused.

**7G. Public Hearing - Markel Property Rezoning to OS District 2nd Reading and Comprehensive Land Use Amendment- 10:31 PM**

Motion to approve Ordinance No. 2236 Markel Property Rezoning to Open Space District, and published by title, made by Councilmember Nguyen and seconded by Councilmember Delgadillo. Motion passes 9-0 with Councilmember Cohen excused.

Motion to approve Resolution No. 2024-77 Comprehensive Plan Land Use Amendment, made by Councilmember Ward and seconded by Councilmember Leslie. Motion passes 9-0 with Councilmember Cohen excused.

**7H. Public Hearing - Wottge Property Rezoning to OS District 2nd Reading- 10:34 PM**

Motion to approve Ordinance No. 2235 Wottge Property Rezoning to Open Space District, and published by title, made by Councilmember Leslie and seconded Councilmember Marsh-Holschen. Motion passes 9-0 with Councilmember Cohen excused.

**8. Mayor and Councilmember Requests for Future Action**

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**9. Adjournment**

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**APPROVED:**

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Mayor Castriotta

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Office of the City and County Clerk





### Proposed Resolution Approving an Agreement for Traffic Signal Pole Replacement

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Consent Items Item: 6B
Presented By	
Ken Rutt, Director of Public Works	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience	

## Overview

[View Correspondence](#)

The Streets Maintenance Division of the Public Works Department oversees the maintenance and operation of Broomfield's 95 Signalized intersections containing 350 traffic signal poles. Traffic signal poles are designed to have a service life that ranges from 30 to 50 years. Staff has identified 36 traffic signal poles that are showing signs of rusting. The Traffic Signal and Street Light Pole Replacement Program has funding to replace four to eight signal poles per year, and staff has evaluated and prioritized poles for replacement in 2024. Proposed Resolution No. 2024-91 would authorize and approve an agreement with Lighthouse Transportation Group, LLC for the amount not to exceed \$490,000 for the Citywide Traffic Signal and Street Light Pole Replacement.

### Attachments

[Traffic Signal Pole Replacement - Memo.pdf](#)

[Resolution No. 2024-91 - Signal Pole Replacement.pdf](#)

[Vendor Signed Broomfield Lighthouse Agreement for Traffic Signal Maintenance \(2\).pdf](#)

## Summary

### [View Correspondence](#)

The Streets Maintenance Division of the Public Works Department oversees the maintenance and operation of Broomfield's 95 Signalized intersections containing 350 traffic signal poles. Traffic signal poles are designed to have a service life that ranges from 30 to 50 years. The service life of traffic signal poles can vary depending on several factors, including the materials used, environmental conditions, and maintenance practices. In addition to age, the use of deicing materials during winter months affects the strength and integrity of signal poles because of rust due to the corrosive nature of deicer.

Public Works staff perform quarterly and annual preventative maintenance inspections and repairs. These inspections include the status and operation of the signal heads, pedestrian crossing heads and buttons, vehicle detection equipment, electronics housed within the signal cabinet, and the signal pole and mast arm condition.

Staff has identified 36 traffic signal poles that are showing signs of rusting. The 2024 Traffic Signal and Street Light Pole Replacement Program has funding to replace five signal poles. Staff has identified the following poles for replacement in 2024 since they are the poles in the worst condition.

- Three poles at the intersection of Interlocken Boulevard and W. Flatiron Crossing Drive
- One pole at E. Flatiron Crossing Drive at the entrance to the Water Way gas station
- One pole at Interlocken Boulevard and Flatiron Boulevard

The replacement of poles and mast arms not only addresses safety needs but also facilitates infrastructure and technology upgrades at each intersection such as wiring upgrades to increase the reliability, consistency, and public safety of the intersection. Furthermore, refreshing the streetscape with new poles and mast arms can positively impact the corridor's appearance.

As part of the effort to reduce waste, once removed, the signal poles will be recycled at a metal recycling facility.

Staff from Public Works and Finance have evaluated and reviewed procurement options for this project and determined the best value, price, and quality is to proceed with a Cooperative Procurement.

[Broomfield Municipal Code \(BMC\) 3-20-160](#), Sole Source and Cooperative Procurement, allows the City and County of Broomfield to use cooperative purchasing arrangements when it is determined to be in the best interest for the City and County for price and quality. Supplies or services may be purchased from a vendor utilizing a cooperative contract or price agreement entered into with any other organization if such organization used a procurement process for the vendor selection that meets or exceeds City and County policies.

The Traffic Signal Installation and Maintenance Services contract between Lighthouse Transportation Group, LLC. and the City of Arvada meets these requirements (the "Arvada Agreement"). The Arvada Agreement is Exhibit A to the proposed agreement between Lighthouse Transportation Group LLC and the City and County of Broomfield.

Lighthouse Transportation Group, LLC. has successfully constructed two signalized intersections in Broomfield over the past three years and is familiar with Broomfield's Standards and Specifications.

Additionally, Lighthouse Transportation Group, LLC. stocks all the necessary items required to repair Broomfield's traffic-related equipment. This allows them to complete projects accurately and efficiently.

Proposed Resolution No. 2024-91 would authorize and approve an agreement with Lighthouse Transportation Group, LLC for the amount not to exceed \$490,000 per Exhibit A of the agreement (the Arvada Agreement). The agreement provides labor, materials, and supplies to replace five signal poles in 2024 with four additional one-year amendments based on the approved budget amount.

The term of the agreement shall extend through March 28, 2025. Resolution No. 2024-91 would authorize the City and County Manager or designee, following negotiations for any price changes, to renew the agreement on an annual basis for four additional one-year terms, subject to annual appropriations.

## Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
Fund 1 (20-70091-55200 - 0AZ0012 ) Citywide Traffic Signal and Street Light Pole Replacement	\$378,613.00
Expenses 1 - Signal Pole Replacement at Flatiron Crossing Dr. & Interlocken Blvd, NEC, SEC, SWC	-\$191,510.00
Expense 2 - Flatiron Crossing Dr & Waterway NEC	-\$59,259.00
Expense 3 - Interlocken Blvd & Flatiron Blvd SEC	-\$59,259.00
Expense 4 - Emergency Repairs	-\$68,585.00
Projected Balance	\$0.00

## Prior Council or Other Entity Actions

Council adopted [Resolution No. 2023-134](#) approving the budget for fiscal year 2024, which included requested CIP projects.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to proceed with the project, the appropriate motion is...

**That Resolution 2024-91 be adopted.**

## Alternatives

Do not proceed with the contract or the signal pole replacements.

# RESOLUTION NO. 2024-91

A resolution approving an agreement with Lighthouse Transportation Group, LLC. Citywide Traffic Signal and Street Light Pole Replacement

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

The agreement by and between the City and County of Broomfield and Lighthouse Transportation Group, LLC. attached hereto, in an amount not to exceed \$490,000, per Exhibit A of the cooperative agreement with the City of Arvada, for the Citywide Traffic Signal and Street Light Pole Replacement, is approved.

## Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the agreement, in form approved by the City and County Attorney.

## Section 3.

The term of the agreement shall extend through March 28, 2025. The City and County Manager or designee thereof is authorized, following negotiations for any price changes, to renew the agreement on an annual basis for four additional one-year terms, subject to funds being budgeted and made available for Broomfield-wide traffic signal and street light pole replacement.

## Section 4.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

AN AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF BROOMFIELD  
AND LIGHTHOUSE TRANSPORTATION GROUP, LLC FOR GOODS AND SERVICES RELATING TO  
ON-CALL, PREVENTATIVE AND SCHEDULED TRAFFIC SIGNAL MAINTENANCE

1. PARTIES. The parties to this Agreement for Goods and Services Relating to On-Call and Scheduled Traffic Signal Maintenance, Preventative Maintenance, and Additional Work Involving Existing Traffic Control Devices and Intersections (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and Lighthouse Transportation Group, LLC (the “Contractor”), collectively, the “Parties,” or individually, a “Party.”
2. RECITALS. The Recitals to this Agreement are incorporated herein by this reference as though fully set forth within the body of this Agreement.
  - 2.1. The City seeks to purchase On-Call and Scheduled Traffic Signal Maintenance, Preventative Maintenance, and Additional Work Involving Existing Traffic Control Devices and Intersections.
  - 2.2. The City of Arvada completed a competitive solicitation for Goods and Services Relating to On-Call, Preventative and Scheduled Traffic Signal Maintenance through the issuance of a Request for Proposal #RFP 24-PW-113 Traffic Signal Maintenance and selected the Contractor to provide such services which other local governments can utilize through a cooperative purchasing effort as documented in the contract attached hereto as Exhibit A (the “Cooperative Contract”).
  - 2.3. The City desires to utilize the terms of the cooperative agreement with the agency indicated above, and the Parties therefore desire to enter into an Agreement for completion of the services further described herein.
3. TERMS AND CONDITIONS. In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:
  - 3.1. Term. The Term of this Agreement shall commence upon the date of the last signature to this agreement and extend and continue until the Cooperative Contract expires or terminates. To the extent the Cooperative Contract terminates earlier, this Agreement shall terminate as well except as otherwise terminated by the City pursuant to Section 31 below.
  - 3.2. Scope. The Contractor shall furnish the labor, equipment, materials and supervision necessary for or incidental to the complete and timely performance

of everything described or reasonably implied from the Cooperative Contract attached hereto as Exhibit A and incorporated by this reference.

- 3.3. Price. The City shall pay the Contractor for goods and services set forth in the Cooperative Contract in accordance with the amount or amounts shown in Exhibit A, and in accordance with any amendments and renewals of the Cooperative Contract. The Contractor shall provide the City upon request with the current pricing or renewal amendment as requested by the City from time to time to verify the current pricing.
- 3.3.1. *Purchase Orders*. Once the City has identified a project for which it desires to obtain the Contractor's services, it shall issue a request for services to the Contractor to provide the service. The Contractor will submit a proposal based on that request in accordance with the pre-established rates set forth in this Agreement and consistent with the pricing established pursuant to the Cooperative Contract, and if accepted by the City, the City will issue a written purchase order ("Purchase Order") for those services including a mutually acceptable scope of work developed by the Parties based on the services described in Exhibit A. A written Purchase Order shall, at a minimum, contain a description of the project/Work, the Purchase Order price, the period of performance for the Work, and the insurance requirements if different from the requirements specified herein.
- 3.3.2. *City Council Approvals*. The Parties acknowledge and agree that any single purchase order in excess of \$200,000, or any cumulative combination of individual purchase orders exceeding \$200,000 in one fiscal year, must be approved by City Council in accordance with City Council's policies and procedures as such policies and procedures may be updated from time-to-time.
- 3.4. Payment. The Contractor will timely issue invoices for products and/or services delivered or rendered pursuant to this Agreement. Invoices shall be paid within thirty (30) days of approval by the City representative. The City will notify the Contractor of any dispute with respect to an invoice in writing. Both Parties will use best efforts to resolve any dispute within 180 days. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction for subsequent payments due to the Contractor under this Agreement or other contracts between the City and the Contractor.
4. NOTICE AND AUTHORIZED REPRESENTATIVES. Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by



email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Contractor. The Contractor shall not replace the Contractor Representative unless: (a) the City requests a replacement, or (b) the Contractor terminates the employment of the Contractor Representative and provides a satisfactory substitute. The City must approve a substitute Contractor Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

- 4.1. The City designates the Streets Division Superintendent as the authorized representative of the City under this Agreement. Email address is [jwalberts@broomfield.org](mailto:jwalberts@broomfield.org).
- 4.2. Contractor designates John Behan as the authorized representative of the Contractor under this Agreement. Email address is [john.behan@lighthouse.org](mailto:john.behan@lighthouse.org).

If the Contractor is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to [citycountyattorney@broomfield.org](mailto:citycountyattorney@broomfield.org).

5. **INDEPENDENT CONTRACTOR**. The Contractor is an independent contractor as provided in C.R.S. § 8-40-202(2). The Contractor is not entitled to workers' compensation benefits and the Contractor is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.
6. **INDEMNIFICATION**. The Contractor expressly agrees to indemnify, defend and hold harmless the City or any of its officers or employees, agents, or officials from any and all claims, damages, liability, or court awards, including costs and attorney's fees, that are or may be awarded as a result of any loss, injury, or damage sustained or claimed to have been sustained by anyone, including but not limited to, any person, firm, partnership, or corporation, in connection with or arising out of any act, omission or act of commission by Contractor or any of its employees or agents in performing work pursuant to this Agreement. In the event that any such suit or action is brought against the City, the City will give timely notice thereof to the other Party.
7. **INSURANCE**. To assure the City that the Contractor is always capable of fulfilling specified indemnification obligations, the Contractor shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit B. Current proof of such insurance is attached at Exhibit B, incorporated by this reference. However, proof of insurance attached as Exhibit B shall not be deemed to limit or define obligations of Contractor as provided elsewhere in this Agreement, and Contractor should rely on its expertise to obtain additional insurance coverage needed for the City and Contractor in its performance hereunder.

8. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Contractor shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall provide the appropriate insurance as required for the Contractor under this Agreement. The Contractor shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Contractor without the express written consent of the City.
9. PROTECTION OF PROPERTY. The Contractor shall protect against damages or interrupted services on all City property at all times during the term of this Agreement. The Contractor shall be held responsible for repairing or replacing any and all property that is damaged by reason of the Contractor's work to the satisfaction of the City within three (3) weeks of the notification of such damage, which may be extended with written approval of the City.
10. NO THIRD PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
11. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Contractor. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Contractor. The City's fiscal year is currently the calendar year.
12. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
13. CONFLICTS WITHIN THE CONTRACT DOCUMENTS. In the event that conflicts exist within the terms and conditions of this Agreement and the attached or referenced exhibits the former shall supersede.
14. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Contractor invoice,

Contractor timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Contractor's rights and obligations shall be solely governed by the terms and conditions of this Agreement.

15. SEVERABILITY. If any provision of this Agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances, or the validity or enforceability of the Agreement as a whole.
16. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.
17. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.
18. DOCUMENTS. All drawings, analyses, plans, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall remain the sole and exclusive property of the City, and the other Party shall not provide copies of any such material to anyone without the express written consent of the City.
19. RECORDS RETENTION. The Contractor shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Contractor for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.
20. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement.
21. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
22. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, heirs, and assigns,

provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.

23. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.
24. DELAYS. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.
25. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.
26. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
27. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
28. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action related to this Agreement shall lie in the District Court, Broomfield County, Colorado.
29. LAWS TO BE OBSERVED. The Contractor shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law,

ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees. The Contractor shall procure all necessary approvals, licenses and permits at its own expense; provided, that, the Contractor will be able to receive no cost permits when such permits are issued by the City directly.

30. TERMINATION. The City reserves the right to terminate this Agreement, in whole or in part, with or without cause by written notice to the Contractor. In the event of termination, the Contractor shall incur no additional expenses and shall perform no further work for the City under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the City. The City shall pay the Contractor for all work satisfactorily performed prior to receipt of the notice of termination and for other services required by the City to be completed prior to termination and satisfactorily performed.
31. SURVIVAL OF OBLIGATIONS. The obligations contained in this Agreement that are not fully performed as of termination shall survive termination and shall continue to bind the Parties until fully performed.
32. EXECUTION; ELECTRONIC SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 2024.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

\_\_\_\_\_  
Mayor  
One DesCombes Drive  
Broomfield, CO 80020

APPROVED AS TO FORM:

\_\_\_\_\_  
City and County Attorney's Office

CONTRACTOR:

Lighthouse Transportation Group, LLC

By: \_\_\_\_\_  
Name: John Behan  
Address: 11861 Bradburn Blvd  
Westminster, CO 80031

EXHIBIT A  
COOPERATIVE CONTRACT

See Attached City of Arvada/Lighthouse Transportation Agreement

**AN AGREEMENT BETWEEN THE CITY OF ARVADA AND  
LIGHTHOUSE TRANSPORTATION GROUP, LLC FOR  
GOODS AND SERVICES RELATING TO ON-CALL,  
PREVENTATIVE, & SCHEDULED TRAFFIC SIGNAL  
MAINTENANCE IN AN AMOUNT NOT TO EXCEED  
\$490,000.00**

**1. PARTIES.** The Parties to this Agreement are the City of Arvada, a Colorado home rule municipal corporation, whose mailing address is 8101 Ralston Road, Arvada, CO 80002 (“Arvada” or the “City”) and Lighthouse Transportation Group, LLC, a Colorado Limited Liability Company, whose principal place of business is located at 11861 Bradburn Blvd, Westminster, CO 80031 (“Contractor”). The Parties may be referred to individually as a “Party” and collectively as the “Parties.”

**2. RECITALS AND PURPOSE.**

- 2.1. Arvada requires a qualified entity to provide on-call and scheduled traffic signal maintenance, preventative maintenance, and additional work involving existing traffic control devices and intersections.
- 2.2. On or about January 12, 2024, Arvada issued a request for proposal (RFP 24-PW-113), seeking responses from qualified entities to provide goods and services as described in Sec. 2.1 (“the Work”).
- 2.3. Contractor has extensive experience in providing on-call, scheduled, and preventative traffic signal maintenance. On or about January 30, 2024, Contractor submitted proposal in response to Arvada’s RFP 24-PW-113 (“Proposal”).
- 2.4. Arvada has determined that Contractor has the requisite background, skill, expertise, and insurance to provide on-call, preventative, and scheduled traffic signal maintenance, under the terms and conditions more fully set forth below.
- 2.5. Arvada and Contractor agree that Arvada contemplates using Contractor as a Contractor for the Work as described in the Sec. 2.1 and the Contract Documents. However, Arvada and Contractor acknowledge and agree that Arvada may, at its sole discretion, use other Contractors to perform similar work, and that this Agreement in no way limits Arvada from hiring other contractors or constitutes a contract for exclusive services from Contractor.

**3. CONTRACT DOCUMENTS AND EXHIBITS.**

- 3.1. Contract Documents. The Contract Documents shall consist of this Agreement together with the following:

**Exhibit A: Arvada’s RFP 24-PW-113 Traffic Signal Maintenance including General Terms and Conditions, Special Terms and Conditions,**



## **& Statement of Work; and**

### **Exhibit B: Contractor's Proposal.**

All exhibits referred to in this Agreement are attached hereto and are, by reference, incorporated herein for all purposes.

- 3.2. Interpretation of Contract Documents. In the event any matter, term, provision, or condition that is the subject of this Agreement requires clarification or is in dispute, or is the subject of a difference of opinion, then the terms of this Agreement shall control, and then the terms of **Exhibit A**, and then **Exhibit B**, in that order.

- 3.2.1. In no event may any contradictory term or provision contained in **Exhibit B** supersede the provisions of this Agreement or **Exhibit A**. Any such contradictory term or provision shall be null and void.

## **4. TERM AND TERMINATION.**

- 4.1. Effective date. This Agreement will become effective and binding on both Parties upon its execution by Arvada.

- 4.2. Term. The term of the Agreement shall remain in effect for one year from Arvada's execution of the Agreement as described in Sec. 4.1., unless otherwise agreed to in writing by the Parties, and subject to availability of funds.

- 4.2.1. Commencement of Work. Notwithstanding the term of this Agreement, the Parties anticipate Contractor will commence the Work on the Effective date as described in Sec. 4.1.

- 4.2.1.1. Contractor will furnish all materials, supplies, tools, equipment, labor, transportation, testing, and other services necessary for the completion of the Work.

- 4.2.1.2. Contractor shall always maintain a team of trained, qualified traffic signal and lighting maintenance employees sufficient to perform the Work. The team of qualified employees shall be sufficient to respond to emergency calls that may be received from time to time and to make temporary and permanent repairs promptly.

- 4.2.2. Termination. Notwithstanding the above, Arvada may terminate this Agreement with or without cause upon 30 days written notice and in accordance with the provisions of this Agreement and **Exhibit A**.

- 4.3 Force majeure. Any delays in or failure of performance by any party of its obligations under this Agreement shall be excused if such delays or failure are a

result of acts of God, fires, floods, strikes, labor disputes, pandemics, accidents, regulations or orders of civil or military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such party.

- 4.4. Renewal. This Agreement may be renewed by Arvada for no more than four (4) consecutive one-year renewal terms. Renewals will be automatic unless the Agreement is terminated.

## 5. **COMPENSATION.**

- 5.1. Payment. Arvada shall pay Contractor for the Work requested by Arvada and rendered by Contractor under this Agreement in an amount not to exceed \$490,000.00.

5.1.1. Contractor shall submit itemized monthly invoices to Arvada for actual goods and services that have been accepted by Arvada or performed by Contractor. Payment by Arvada will be due NET 30 days.

5.1.2. In the end of each month, Arvada will send a performance report to the Contractor. The Principal or VP level staff from the Contractor's office will sign and return the performance report to Arvada's Traffic team. Invoices will not be processed without a signed performance report. The City of Arvada will not be responsible for the late payment.

- 5.2. Additional Work. While Arvada has listed its major requirements for its solicitation in **Exhibit A**, Arvada may, during the term of this Agreement, wish to purchase other related services identified and offered by Contractor, based upon the pricing/fee contained in Contract Documents. Arvada reserves the right to award these ancillary items to Contractor or another top-rated Bidder based upon the negotiated scope of work and fee structure. This option, if exercised, in no way obligates Arvada to pursue additional services with Contractor.

6. **SCOPE OF SERVICES.** The Scope of Work is reflected in **Exhibit A**. However, of the services described in the Scope of Work, Contractor shall only perform the Work as described in Sec 2.1 or as amended by the mutual consent of the Parties in writing. Should the Parties agree in writing to a change in the scope of services or a change in a deadline provided in the Contract Documents, then the Parties will timely execute an amendment, which will address the amended scope of services, revisions to necessary start and end dates, any applicable deliverables and associated due dates, reporting requirements, documentation requirements, and any other matters that the Parties deem necessary.

7. **TERMS AND CONDITIONS IN CONTRACT DOCUMENTS.** Contractor affirms that it has read and is familiar with all of the Contract Documents including the General and Special Terms and Conditions set forth in the City's solicitation or otherwise attached to this Agreement, and agrees to be bound by those Terms and Conditions.

8. **PERFORMANCE MEASURES.** The performance measures for this Agreement shall be those proposed by Contractor in its Response and accepted by Arvada and Contractor's performance shall be documented as to (a) completing the agreed upon Scope of Work, (b) completing within the contracted price, (c) completing the Work within the contracted timeline, (d) completing the Work with materials that meet industry standards, and (e) completing any installation required by the Work with high quality standards.
9. **PROJECT OWNERS.** Arvada designates Nathan Sexton (nsexton@arvada.org) as Arvada's Project Owner and will be Arvada's responsible staff member to provide direction to Contractor during the course of the Work. Arvada reserves the right to change the Project Owner(s) at its discretion and will promptly notify Contractor of any such change in writing. Contractor designates John Behan (john.behan@lighthouse.org) as Contractor's Project Owner and will be Contractor's primary contact person during the course of this Agreement. Contractor may change the Project Owner(s) with the Arvada's prior written approval.
10. **INSURANCE.** Contractor will be required to, at its own expense, keep in full force and effect during the term of the Agreement, and during the term of any extension or amendment of the Agreement, insurance reasonably sufficient to insure against the liability assumed by Contractor under the terms of the Contract Documents. Contractor's failure to secure and maintain sufficient insurance at any time during the pendency of this Agreement do not relieve Contractor of its obligations under this provision; Contractor's failure to fulfill the obligations of this section will make the Contractor the *per se* insurer.
11. **INTEGRATION, AMENDMENT, AND SEVERABILITY.** This Agreement represents the entire agreement between the Parties; there are no oral or collateral agreements or understandings. The Parties, by mutual agreement, may amend this Agreement at any time. Any amendments must be in writing and will be incorporated into and made a part of this Agreement. If any provision in this Agreement is held to be invalid or unenforceable, the remainder of this Agreement will be deemed severable, and as such, the remaining provisions will continue in full force and effect.
12. **NOTICES.** Any notice or notification required or permitted by the Agreement shall be in writing, and may be sent to the other Party by certified or registered mail, or by electronic mail, addressed to the that Party's project owner at such street address or email address as are set forth herein or subsequently designated by the Parties. Such notice or notification shall be deemed to have been given when deposited in the United States mail or, in the case of electronic mail, upon the sent date stamp contained in the electronic mail.
13. **ADDITIONAL DOCUMENTS OR ACTION.** The parties agree to execute any additional documents and to take any additional action that is necessary to carry out this Agreement.
14. **BINDING AUTHORITY.** Contractor represents and affirms that the signature page hereof accurately states the full legal name of Contractor (whether as a corporation, partnership, limited liability company, sole proprietorship, or other), contains all requisite signature(s) on behalf of Contractor, and in all other respects is effective to bind

Contractor, in accordance with all applicable statutes, regulations, resolutions, rules, bylaws, agreements, or similar sources of authority or limitation. This Agreement may be executed in counterpart(s), each of which shall be deemed to be an original, and all of which, taken together, shall constitute one instrument.

DATED this 29 day of March, 2024.

**CITY OF ARVADA**, a Colorado home  
rule municipal corporation

Lorie B. Gillis  
Lorie B. Gillis  
City Manager of Arvada  
8101 Ralston Road  
Arvada, CO 80002

ATTEST:

Kristen R. Rush  
City Clerk



APPROVED AS TO FORM:  
Rachel A. Morris

By: Kelsy Sargent

**LIGHTHOUSE TRANSPORTATION  
GROUP, LLC**

John Behan  
John Behan  
Operation Manager  
11861 Bradburn Blvd.  
Westminster, CO 80033  
Email: john.behan@lighthouse.org

# **Exhibit A**

**An Agreement Between The City Of Arvada And  
Lighthouse Transportation Group, LLC For Goods And Services  
Relating To On-Call, Preventative, & Scheduled Traffic Signal  
Maintenance In An Amount Not To Exceed \$490,000.00**

**24-PW-013**

**Traffic Signal Maintenance**

1/12/2024

**Proposal #: Title:**

**RFP Issued:**



Zoom

**Pre-proposal Meeting:**

1/18/2024 – 2:00 PM MDT - via

<https://arvadaco-gov.zoom.us/j/89927875638?pwd=mxVUQd86eaFG7GhEWDbyWwba9C3p7w.1>

Meeting ID: 899 2787 5638

Passcode: 589720

**Question Deadline: 1/25/2024 - 2:00 PM MDT**

Questions must be submitted through BidnetDirect.com.

Responses will be posted on Bidnet via addendum.

**Proposals Due By: 1/30/2024 - 10:00 AM MDT**

Electronic Submissions must be submitted online at BidNetDirect.com.  
This is the only valid source for postings regarding this solicitation.

Late responses will not be considered for award.

For additional administrative information not related to the project contact: Cheryl Dye at [cdye@arvada.org](mailto:cdye@arvada.org) Contact with the requesting department may result in vendor disqualification.

**Arvada Vision: We dream big and deliver.**

**Mission:** We are dedicated to delivering superior services to enhance the lives of everyone in our community.

**Values:**

**Innovation** – We excel in creativity, flexibility and the use of best practices while valuing diverse backgrounds, ideas and perspectives.

**Passion** – We are a high performing, inclusive team inspiring each other to pursue excellence.

**Opportunity** – We value our diversity, embrace possibilities, face challenges, persevere and take action to deliver quality results.

**Documents included in this Request:**

General Terms and Conditions page 2-4

## **GENERAL TERMS AND CONDITIONS**

1. **NO MULTI-YEAR FISCAL OBLIGATION.** Financial obligations of Arvada payable after the current fiscal year are contingent on funds for that purpose being appropriated, budgeted, and otherwise made available by the City Council for Arvada. Arvada's obligations under the Agreement shall be from year to year only and shall not constitute a multiple-fiscal year direct or indirect debt or other financial obligation of Arvada within the meaning of Article X, Section 20 of the Colorado Constitution (TABOR).
2. **TAXES.** Arvada shall not be liable for the payment of any excise, sales, or use taxes. Arvada is exempt from federal excise taxes under I.R.C. Chapter 32 (26 U.S.C., Subtitle D, Ch. 32) and from State and local government sales and use taxes under §§39-26-704(1), *et seq.*, C.R.S. (Colorado Sales Tax Exemption Identification Number 98-01789). Contractor shall not invoice Arvada for any state, federal or local taxes. Upon written notification by Arvada, Contractor shall reimburse Arvada in a timely manner for any taxes erroneously paid by Arvada.
3. **NO INDEMNIFICATION BY ARVADA.** Arvada is prohibited under Article XI, Section 1 of the Colorado Constitution from indemnifying anyone. Despite any provision in any contract document to the contrary, Arvada does not indemnify Contractor or anyone else under the Agreement.
4. **INDEMNIFICATION OF ARVADA.** Contractor shall indemnify, defend, and hold harmless Arvada, its employees, agents and assignees (the "Indemnified Parties"), against any and all costs, expenses, claims, damages, liabilities, court awards, and other amounts (including attorneys' fees and related costs) arising from or related to any act or omission by Contractor, or its employees, agents, Subcontractors, or assignees in connection with the Agreement.
  - 4.1. **Confidential Information Indemnification.** Disclosure or use of Arvada Confidential Information by Contractor may be cause for legal action by third parties against Contractor, Arvada, or their respective agents. Contractor shall indemnify, defend, and hold harmless the Indemnified Parties, against any and all claims, damages, liabilities, losses, costs, expenses (including attorneys' fees and costs) incurred by Arvada in relation to any act or omission by Contractor, or its employees, agents, assigns, or subcontractors.
  - 4.2. **Intellectual Property Indemnification.** Contractor shall indemnify, save, and hold harmless the Indemnified Parties, against any and all costs, expenses, claims, damages, liabilities, and other amounts (including attorneys' fees and costs) incurred by the Indemnified Parties in relation to any claim that any Deliverable, Good or Service, software, or Work provided by Contractor under the Agreement (collectively, "IP Deliverables"), or the use thereof, infringes a patent, copyright, trademark, trade secret, or any other intellectual property right. Contractor's obligations shall not extend to the combination of any IP Deliverables provided by Contractor with any other product, system, or method, unless the other product, system, or method is (a) provided by Contractor or Contractor's subsidiaries or affiliates; (b) specified by Contractor to work with the IP Deliverables; (c) reasonably required in order to use the IP Deliverables in its intended manner and the infringement could not have been avoided by substituting another reasonably available product, system, or method capable of performing the same function; or (d) is reasonably expected to be used in combination with the IP Deliverables.
5. **GOVERNMENTAL IMMUNITY.** Liability for claims for injuries to persons or property arising from the negligence of Arvada, its departments, boards, commissions, committees, bureaus, offices, employees and officials shall be governed by the provisions of the Colorado Governmental Immunity Act, §§24-10-101, *et seq.*, C.R.S. (CGIA). No term or condition of the Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions contained in the CGIA.
6. **OPEN RECORD REQUESTS.** Arvada is obligated to comply with the Colorado Open Records Act (C.R.S. §§24-72-200.1 *et seq.*)(CORA), which may require Arvada to disclose all or a portion of communications relating to the Agreement, any transaction under the Agreement, and other related matters. Contractor has been advised to familiarize itself with CORA. Any confidentiality provisions in any contract documents are subject to the provisions of CORA.
7. **PROTECTION OF PERSONAL IDENTIFYING INFORMATION.** In the event the Agreement includes or requires Arvada to disclose to Contractor any Personal Identifying Information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party service providers.
8. **NO THIRD PARTY BENEFICIARIES.** The Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than Arvada and Contractor. Enforcement of the Agreement and all related rights and obligations are reserved solely to Arvada and Contractor. Any services or benefits which third parties receive as a result of the Agreement are incidental and do not create any rights for such third parties.

9. **ASSIGNMENT.** Contractor's rights and obligations under the Agreement are personal and may not be transferred or assigned without the prior, written consent of Arvada. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Contractor's rights and obligations approved by Arvada shall be subject to the provisions of the Agreement. Any provision of an assignment that enlarges any duty, responsibility, or obligation of Arvada, or that limits, curtails, or diminishes any right or privilege of Arvada, without Arvada's express written consent, shall be void.

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10. **BINDING EFFECT.** This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns.

11. **SURVIVAL.** Any provision of the Agreement that imposes an obligation on a party after the Agreement's termination or expiration shall survive the termination or expiration and shall be enforceable by the other party.

12. **SUBCONTRACTS.** Contractor shall not subcontract any of its responsibilities without Arvada's prior written approval, which will not be unreasonably withheld. Contractor shall submit to Arvada a copy of each such subcontract upon Arvada's request. All subcontracts Contractor enters into in connection with the Agreement shall comply with all applicable federal, state, and local 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 the Agreement. Contractor agrees it is fully responsible for subcontractors performing services under the Agreement. Contractor shall be Arvada's sole point of contact regarding the services, including with respect to payment.

13. **INDEPENDENT CONTRACTOR.** Contractor shall perform its duties under the Agreement 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 Arvada. Contractor shall not have authorization, express or implied, to bind Arvada 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 Arvada and Arvada 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 the Agreement. Contractor shall: (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law; (ii) provide proof thereof when requested by Arvada; and (iii) be solely responsible for its acts and those of its employees and agents.**

14. **LICENSES, PERMITS, AND OTHER AUTHORIZATIONS.** Contractor shall secure, prior to the effective date, and maintain at all times during the term of the Agreement, at its sole expense, all licenses, certifications, permits, and other authorizations required to perform its obligations under the 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 the Agreement.

15. **STANDARD AND MANNER OF PERFORMANCE.** Contractor shall perform its obligations under the Agreement in accordance with the highest standards of care, skill, and diligence in Contractor's industry, trade, or profession.

16. **TIME OF THE ESSENCE.** Contractor acknowledges and agrees that time is of the essence for this Agreement and that it is an essential term of this Agreement that Contractor maintain a rate of progress in the Services that will result in completion of the Services in accordance with this Agreement. To that end, Contractor agrees to proceed with all due diligence to complete the Services in a timely manner in accordance with this Agreement, and further agrees that failure to complete any of the Services during the Term of this Agreement, or as may be more specifically set forth in an attachment, exhibit, or modification, shall be deemed a breach.

17. **WAIVER OF BREACH.** A waiver by any party to the Agreement of a breach of any Agreement term shall not operate or be construed as a waiver of any subsequent breach by either party.

18. **RIGHT TO TERMINATE.** Arvada shall have the right to terminate, without cause, the Agreement. Any such termination shall not be considered a breach of the Agreement or any extension. In the event Arvada terminates for convenience, Arvada will pay Contractor for requested work performed up until the time of termination, not to exceed the total amount of the contract price agreed upon by Arvada and Contractor.

19. **EXTERNAL TERMS AND CONDITIONS.** Notwithstanding anything to the contrary, Arvada shall not be subject to any provision included in any terms, conditions, or agreements appearing on Contractor's or a subcontractor's website or any provision incorporated into any click-through or online agreements related to the Work unless that provision is specifically referenced in the Agreement.

20. **PROHIBITED TERMS.** Any term included in the Agreement that requires Arvada to indemnify or hold Contractor harmless; requires



Arvada 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. Any term included in the Agreement that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under the Agreement, and no insurance policy shall be interpreted as being subject to any limitations of liability of the Agreement.

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21. **COMPLIANCE WITH ALL LAWS.** Contractor shall comply with all applicable federal, Colorado and Arvada laws, rules, regulations, policies and procedures in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.
22. **BINDING ARBITRATION PROHIBITED.** Arvada does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary shall be null and void.
23. **GOVERNING LAW AND VENUE.** Colorado law, rules, and regulations shall be applied in the interpretation, execution, and enforcement of the Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to the Agreement shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in Jefferson County.
24. **OWNERSHIP OF WORK PRODUCT.** The originals of all plans, reports, studies, data, or other materials or information relating to the Work that are produced by Contractor shall be delivered to and become the property of Arvada. Contractor may retain copies of any originals; however, no plans, reports, studies, data, or other materials or information relating to the Work shall be released to any person or entity without the prior written consent of Arvada. Nothing in this clause is intended to affect Contractor's right to use generic know-how learned in the course of providing services under the Agreement for the future benefit of Arvada or others.
25. **SOFTWARE PIRACY PROHIBITION.** Arvada or other public funds payable under the Agreement shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of the Agreement and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If Arvada determines that Contractor is in violation of this provision, Arvada may exercise any remedy available at law or in equity or under the Agreement, including, without limitation, immediate termination of the Agreement and any remedy consistent with federal copyright laws or applicable licensing restrictions.
26. **ACCESSIBILITY COMPLIANCE.**
- 26.1 Arvada is obligated to comply with the Colorado Anti-Discrimination Act (C.R.S. §§24-34-300 et seq.)("CADA"), which requires all digital and online platform and content providers to comply with the minimum Accessibility Standards for Individuals with a Disability, adopted by the Colorado Office of Information Technology ("OIT") under C.R.S §24-85-103(2.5). Contractor has been advised to familiarize itself with CADA.
- 26.2 To the extent the Work or any of Contractor's services provided under the Agreement involves digital, technological components, including but not limited to software, websites, applications, digital documents (the "Material"), all Material shall comply with the OIT's currently adopted minimum Accessibility Standards for Individuals with a Disability at all times.
- 26.3 Contractor shall indemnify, save, and hold harmless Arvada, its employees, agents and assignees (the "Indemnified Parties") against any and all costs, expenses, claims, damages, liabilities, court awards and other amounts (including attorneys' fees and related costs) incurred by any of the Indemnified Parties in relationship to Contractor's failure to comply with Section (26.2) above.
- 26.4 Upon Arvada's request, Contractor shall certify to Arvada that its service(s) and digital documents are compliant with Section (26.2) above. Arvada may require Contractor's compliance to the OIT's currently adopted minimum standards of accessibility to be determined by a third party selected by Arvada to attest to Contractor's compliance.

## **SPECIAL TERMS AND CONDITIONS**

### **1. PRICES FIXED AND FIRM FOR THE TERM OF THE CONTRACT**

Prices proposed by the vendor shall remain fixed and firm during the term of the contract; however, the vendor may offer incentive discounts from the fixed price. This contract shall commence upon the date specified in the Contract or Purchase Order and shall remain in effect until such time as all items/services purchased in conjunction with this solicitation have been delivered and accepted by the City's authorized representative. It shall be understood and agreed that any warranty period which exceeds this term shall

- 2. OPTION TO RENEW FOR SUBSEQUENT YEARS** The prices or discounts quoted in this Solicitation shall prevail for one year from the effective date of the contract, at which time the City shall have the option to renew the contract for 4 additional one year periods; provided that the vendor provided satisfactory performance during the contract period. Continuation of the contract beyond the initial period is a City prerogative and not a right of the vendor. Unless otherwise notified in writing, the option period shall become automatic at the end of the original period.

During the option period, the City will consider an adjustment to the pricing structure. For consideration, the vendor must document

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that it was subject to a price adjustment by the product manufacturer or a direct wholesale supplier. Any price adjustments shall not exceed the amount being passed on.

### **3. CONTENTS OF OFFER**

Vendors are required to submit offers with the following conditions:

- a. Vendors shall make all investigations necessary to inform themselves of the facilities affected by the delivery of products and services required by the Solicitation.
- b. Any official interpretation of the Solicitation may only be issued by an authorized agent of the City. The City shall not be responsible for other interpretations offered by employees not authorized.
- c. The City shall issue Addenda if substantial changes are required which may impact the content and submission of Offers. A copy of such addenda will be publicly posted with the original RFP posting.
- d. The apparent silence or omissions within this Solicitation regarding a detailed description of the materials or services shall be interpreted to mean that only the best commercial practices are to prevail and that only materials and workmanship of first quality are to be provided.

### **4. CLARIFICATION AND MODIFICATIONS**

The contract resulting from this solicitation will be subject to the Solicitation materials, City Ordinance, State and Federal Statutes. When conflicts occur, the highest authority shall prevail. Vendors are required to indicate any variances to the terms, conditions, requirements and specifications of this Solicitation; no matter how slight. If variations are not stated in the vendor's Offer, it shall be agreed that the vendor's Offer fully complies with all conditions identified in this Solicitation.

- 5. ELIGIBILITY OF VENDORS: MUST BE ENGAGED IN SUPPLYING PRODUCTS OR SERVICES RENDERED** Offers will only be considered from firms which have been engaged in the business of manufacturing or distributing the goods and/or performing services described in this Solicitation. Vendors must be able to produce evidence that they have an established satisfactory record of performance for at least two (2) years and have sufficient finances and structure to ensure that they can satisfactorily execute the Contract requirements, as determined by authorities of the City. The City reserves the right, before awarding the contract, to require a vendor to submit evidence of its qualifications including, but not limited to, financial, technical and other qualifications, as well as past performance with the City, for consideration in making the award in the best interest of the City.

### **6. CONFIDENTIAL DOCUMENTS**

Vendors may designate specific pages or sections within their submission as trade secret or confidential commercial information or as otherwise protected by law ("Confidential Information"). Documents and data that are considered Confidential Information shall be clearly marked as such and separated from the rest of the solicitation submission documents. Comingling is not acceptable. The City does not favor blanket assertions of Confidential Information. Please note that blanket assertions that merely classify and/or broadly claim information is confidential are insufficient as a matter of law. *See, International Brotherhood of Electrical Workers Local 68 v. Denver Metropolitan Major League Baseball Stadium District*, 880 P.2d 160 (Colo.App. 1994). Any information that will be included in any resulting contract cannot be considered Confidential. Under no circumstances may submission pricing information be considered Confidential. In the event a formal contract is entered into with the City and a portion of the Proposal/Response carries a designation indicating the Vendor believes it is Confidential Information, then the City agrees that it will use its best efforts to forward any request for the disclosure of the Confidential Information to the Vendor. By its submission of the Proposal/Response, Vendor agrees to promptly respond to the request for disclosure with any objections and reasons therefor in accordance with the Colorado Open Records Act C.R.S. §§24-72-101 *et seq.* and any other applicable law. Further, Vendor agrees to assume the obligation to defend, hold harmless, and indemnify the City in any legal proceeding that arises from non-disclosure of documents or data pursuant to the Vendor's objection.

### **7. COOPERATIVE PURCHASING**

The City of Arvada encourages and participates in cooperative purchasing endeavors undertaken by or on behalf of other governmental agencies including the Multiple Assembly of Procurement Officials and the Cooperative Educational Purchasing Council (CPEC).

We hereby request that any member of MAPO/CPEC be permitted to avail itself of this contract and purchase, as specified by the contract resulting from this RFP, at the contract prices established therein. Each governmental entity would establish its own contract, issue its own orders, be invoiced directly, make its own payments and issue its own exemption certificates as required. It is understood and agreed that the City of Arvada is not a legally binding party to any contractual agreement made between another governmental entity and the successful vendor as a result of this solicitation. The City shall not be liable for any costs or damages incurred by any other entity.

**8. MODIFICATIONS TO EXISTING CONTRACT**

Terms and conditions may be added, modified, and deleted upon mutual agreement between authorized agents of the City and the vendor provided that such terms and conditions remain within the scope and original intent of the Solicitation. Said terms and conditions may include, but are not limited to, additions or deletions of service levels and/or commodities, and increases or decreases in the time limits for an existing contract. Any and all modifications must be signed by authorized agents of the City and the vendor prior to the enactment of such modifications.

**9. DELIVERY**

Quoted prices and deliveries are to be FOB Destination freight prepaid and shall require inside delivery unless otherwise specified in the Special Conditions of this Solicitation. Title and risk of loss shall pass to the City upon inspection and acceptance by the City at its designated point of delivery; unless otherwise specified in the Special Conditions.

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**10. CONDITION OF MATERIALS AND PACKAGING**

materials and products supplied by the vendor in conjunction with this solicitation shall be new (unless otherwise specified in the Special Conditions), warranted, free from defects, and consistent with industry standards. The Solicitation price shall include commercial packaging. The materials and products shall be delivered to the City in excellent condition for inspection by City representatives. If the product(s) is damaged or a number of items or components are missing during shipment, the vendor shall either replace the damaged items (if shipped by the vendor) or be responsible for filing, processing and collecting all damage claims (if shipped by a contractor of the shipper). In the event that any of the materials and products supplied to the City by the vendor are found to be defective or do not conform to the specifications, the City reserves the right to return the product to the vendor at no cost to the City; either as an exchange for suitable merchandise or for full credit.

**INSURANCE REQUIREMENTS**

The following listed insurance requirements shall be carried by the selected vendor for the entirety of the contract. Applicable requirements for this solicitation are identified by completed check boxes.

1. **Commercial General Liability**, written on an occurrence form, for limits not less than \$1,000,000 for bodily injury and property damage for each occurrence and not less than \$2,000,000 aggregate. Coverage shall include premises and operations liability, blanket contractual, broad form property damage, products and completed operations and personal injury endorsements.
2. **Workers' Compensation and Employers Liability** as required by statute. Employers Liability coverage is to be carried for a minimum limit of \$1,000,000 each accident/disease and \$2,000,000 aggregate.
3. **Automobile Liability** for limits not less than \$1,000,000 combined single limit for bodily injury and property damage for each occurrence. Coverage shall include owned, non-owned and hired automobiles.
4. **Umbrella Liability** of \$ , following form to the Commercial General Liability.
5. **Builders Risk or Course of Construction** Purchased by contractor to cover physical damage to property in construction or rehab. Contractors will ensure that City and subcontractors will be covered as additional insureds, excluding their own machinery, tools and equipment.
6. **Professional Liability** Professional Liability insurance in an amount of not less than \$1,000,000 per occurrence, covering the professional work contemplated under this proposal. The coverage shall have an extended reporting period of three (3) years following the date of substantial completion of the work for reporting of claims.
7. **Pollution Legal Liability Insurance** for limits not less than \$1,000,000 per occurrence (or claims made) and not less than \$1,000,000 aggregate for bodily Injury, personal Injury and property Damage.
8. **Privacy/Network/Cyber Liability Insurance** for limits not less than \$1,000,000 for any firm providing product or services associated with IT, software, communication, or network.

**Additional Insurance Requirements:**

- Contractor will be required to, at its own expense, keep in full force and effect during the term of the Agreement, and during the term of any extension or amendment of the Agreement, insurance reasonably sufficient to insure against the liability assumed by Contractor pursuant to the provisions of the solicitation sent by the City of Arvada or as determined by the City of Arvada Risk Manager.
- Issuance of a Purchase Order/Contract is contingent upon the receipt of the insurance documents. Work shall not commence before this requirement is met. If the vendor fails to submit the required insurance documents within fifteen (15) calendar days after notice to submit such policies is given to the vendor by a City representative, the vendor may be in default of the Award.

- Except for Workers Compensation, Employer's Liability insurance, Automobile Liability and Professional Liability insurance, the City of Arvada must be endorsed as an additional insured on a Certificate of Insurance.
- All coverage must be written with carriers holding a minimum A.M. Best rating of A-VII, and authorized to do business in Colorado. Coverage shall be primary, and any insurance held by the City of Arvada is excess and non-contributory.
- The City, through its Risk Manager, reserves the right to require additional insurance coverage and other requirements.

## **ADMINISTRATIVE INFORMATION**

### **1. PURPOSE - TO OBTAIN PROPOSALS**

The purpose of this Solicitation is to provide qualified vendors with sufficient information regarding the City's needs in order to adequately prepare and submit a Proposal. Proposals must be received by the date and time established in this solicitation. Once the deadline has passed, Proposals will not be able to upload to the BidNet site. Proposals are proprietary working documents offered by prospective vendors and, as such, are not subject to public inspections until an official award is made.

### **2. PREPARATION AND SUBMISSION**

Offers will be prepared as follow:

- a. A blank shall be construed as "No Bid/not offered". Where there is a discrepancy between the unit price and the extension of prices, the unit price shall prevail.
- b. Vendors will not knowingly participate in solicitations where there exists a conflict of interest with their firm and a member of City staff or their immediate family.
- c. Solicitations and addenda are available at [WWW.BIDNETDIRECT.COM](http://WWW.BIDNETDIRECT.COM). Registration is available to receive email notification of new solicitations, addenda and communications.
- d. Vendors who qualify their Offers by requiring alternate contractual terms and conditions as a stipulation for contract award, must include such alternate terms and conditions in its Offer. The City reserves the right to declare the vendor's Offer as non responsive if any of these alternate terms and conditions are in conflict with the City's terms and conditions, or its best interest.
- e. Once Offers have been opened, the City shall not consider any subsequent submissions of alternate terms and conditions.

### **3. MODIFICATION OR WITHDRAWAL OF OFFERS**

**Modifications to Offers**- Changes to the Offer after the submission deadline shall be allowed only when the vendor can show convincing evidence that an unintentional factual mistake was made. Modification requests must be made in writing. Any modification submitted to the City must have the vendor's name, address, Solicitation Number and title included.

**Withdrawal of Offers**- Offers may not be withdrawn after the deadline for the Solicitation for a period of ninety (90) calendar days. If an Offer is withdrawn by the vendor during this ninety (90) day period, the City may, at its option, suspend the vendor and may not accept any Offer from the vendor for a six (6) month period following the withdrawal.

### **4. REJECTION OF OFFERS**

- a. The City may reject an offer, in whole or in part, for reasons including, but not be limited to:
  - i. The vendor misstates or conceals any material fact in its Proposal;
  - ii. The vendor's Offer does not strictly conform to the law or requirements of the Solicitation;
  - iii. The Offer expressly requires or implies a conditional award that conflicts with the method of award stipulated in the Special Conditions;
  - iv. The Offer does not include documents which are required for submission with the Offer; or
  - v. The Offer has not been executed by the vendor through an authorized signature.
- b. The City may, at its sole and absolute discretion:
  - i. Reject all or parts of Offers submitted by prospective vendors;
  - ii. Re-advertise this Solicitation;
  - iii. Postpone or cancel the Solicitation;
  - iv. An Offer may not be accepted from, nor any contract be awarded to, any person or firm which
    - (a) is in arrears to the City for any debt or Contract, or is a defaulter as surety for any obligation to the City.
    - (b) has failed to perform faithfully any previous contract with the City, State or Federal governmental for a minimum period of one (1) year after this previous Contract was terminated for cause.
    - (c) has pending litigation against the City on the date and time that the Solicitation is due.

### **5. BEST VALUE AGENCY**

The City of Arvada is a best value agency. Best value means a technique in a competitive solicitation process which emphasizes value over price and permits the evaluation of criteria such as, but not limited to, qualifications, experience, and performance data to determine the best overall value to the city. It is solely incumbent on the staff of the City of Arvada to conduct due diligence to determine best value prior to award.

## **6. METHOD OF AWARD - BEST EVALUATIVE SCORE BASED ON WRITTEN PROPOSAL:**

The selection process will consist of evaluation of qualified proposals received based on the criteria outlined in this RFP. Presentations may be requested to confirm or clarify the information contained in the proposal responses. It is the intent of the City to award a contract to the vendor(s) who receives the highest score from the City's RFP Evaluation Committee.

The Committee will score written Proposals by reviewing documentation submitted by the vendors. Evaluation will be based on the following criteria:

- 1) Firm Capabilities& assigned staff experience
- 2) Scope of submission
- 3) Effective Project Approach and safety
- 4) Effectiveness of implementation, or installation, plan.
- 5) Price/total cost of ownership to support best

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Exceptions to specifications or terms and conditions may result in submission being deemed non-responsive.

## **7. PRESENTATIONS**

A second phase MAY be incorporated, in which the Committee will invite a limited number of vendors who received high scores during phase one, to provide an oral presentation. The evaluative score from the oral presentations will determine the top rated vendor(s).

## **8. PROPOSAL FORMAT REQUIREMENTS**

Written proposal should include the information in the format outlined below and be limited to no more than twenty (20) pages. Required City forms, resumes, title pages are excluded from page count. Information should be concise, without extraneous content. Refrain from submitting generic marketing materials, alternate and unapproved agreements, and any other information not requested.

All information should be contained in in one pdf file, with sections bookmarked. The file name should start with proposer's name, then the proposal number. Imbedded links for required information are NOT acceptable. All information that proposers want evaluated must be contained in the pdf file.

- a. Cover & executive summary
- b. Detail Firm's and assigned staff capabilities, experience, qualifications, and compliance status
- c. Details of proposal – proposed services, implementation timeline and project / project management approach as it applies to the Statement of Work/Scope of Services
- d. Previous projects of similar size and scope, with references
- e. Completed City submittal forms including this sheet and all other forms and attachments specifically requested
- f. Fee Schedule/Cost Proposal – cost for services and actions outlined in the Statement of Work/Scope of Services

## **STATEMENT OF WORK**

### **GENERAL BACKGROUND**

The City of Arvada is located in the north-west of the Denver metro area. The City has ninety-nine (99) traffic signals and Fourteen (14) ped/fire signals. To ensure consistent operation, these signals require regular maintenance.

### **OVERVIEW**

The City of Arvada is seeking an experienced qualified Respondent to perform comprehensive traffic signal maintenance, emergency repair of traffic signals and to provide locate services. The Contractor is to ensure the safe and efficient operation of the City traffic and outdoor lighting infrastructure.

### **SCOPE OF SERVICE**

This solicitation is for the request of a qualified contractor to furnish all labor, equipment, and materials and perform all work necessary to maintain and repair all the city-owned traffic signal installations listed in **Attachment 1**. Experienced firms must provide a proven track record in traffic signal and lighting maintenance and repair. The contractor shall always maintain a team of trained, qualified traffic signal and lighting maintenance employees sufficient to perform the work required and described herein. The team of qualified employees shall be sufficient to respond to emergency calls that may be received from time to time and to make temporary and permanent repairs promptly.

### **Materials:**

I. The Contractor shall furnish all personnel, vehicles, equipment, and materials required to perform all traffic signal and lighting maintenance.

**II. Asset Management System:** The City of Arvada developed an assets management system for the signal infrastructure. The assets management database was developed in MS Excel; Later, an abridged version of the MS Excel database was included in the GIS system. The City staff in coordination with the Contractor will update the current database and create a baseline information to track and manage various traffic signal maintenance initiatives described in this document. The digital database will be stored in a cloud drive provided by the City, and the City preserves the right to provide access to designated staff identified by the Contractor.

**III. Hardware components** - may include, but are not limited to, signal and pedestrian heads, pedestrian buttons (frame, hardware and signs), signal controller components, L.E.D. traffic signal lamp modules, battery backup system, conflict monitors, audible pedestrian signals Traffic signal control cabinet, poles (signal, ped and lighting). Actual quantities for specific materials in the On-hand Inventory shall be documented for City review prior to the start of work.

IV. The contractor shall maintain adequate storage and shop repair facilities to perform all work, including a sufficient stock of spare parts, standby controllers, and signal equipment to effect permanent repairs to the system within a 30- day period. *Failure to effect permanent repairs within this time limit shall be sufficient cause for the City to authorize repairs to be completed by others. Repetitive failure as determined by The City, shall be sufficient cause to cancel this Agreement.*

V. All replacement parts shall be in-kind, and no substitutions shall be made without approval by the City. Substitute replacement parts not incorporating the same features and operational characteristics as the part being replaced will not be approved.

## Performance Standard

The contractor shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in the contractor's profession. If The City determines that any of the contractor's work is not in accordance with such level of competency and standard of care, The City, in its sole discretion and in addition to any other remedies provided herein or by law, shall have the right to do any or all of the following: • Require the contractor to meet with The City to review the quality of the work and resolve matters of concern.

- Require the contractor to repeat the work at no additional charge until it is

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satisfactory to the City; or

- Terminate this Agreement per RFP General Terms and Conditions on page 3.

In the end of each month, City of Arvada will send a Performance report to the Contractor. The Principal or VP level staff from the Contractor's office will sign and return the performance report to the City of Arvada's Traffic team. Invoices will not be processed without a signed performance report. The City of Arvada will not be responsible for the late payment. The Sample Performance Report is attached. **(Attachment 2)**

Records:

Signal Timing Charts:

The Contractor shall keep signal timing charts in the controller cabinets as well as in digital format. The digital signal chart will be stored in a cloud drive provided by the City and City will preserve the right to provide access to designated staff identified by the Contractor. The city is open to reviewing and accepting any signal timing charts the Contractor can provide. Example Timing chart attached.

Maintenance Log:

The contractor shall maintain a maintenance history log in the cabinet at each intersection as well as a digital log of each intersection's maintenance log (Example Maintenance Log attached) The digital Maintenance logs will be stored in a cloud drive provided by the City, and the City will preserve the right to provide access to designated staff identified by the

Contractor. The city is open to reviewing and accepting any maintenance log example the Contractor can provide.

#### Monthly Maintenance Report:

Monthly invoice and Maintenance Report shall be provided to the City Traffic Operations Manager. the Monthly Maintenance Report shall be in Digital (MS Word or MS Excel) and Hard Copy format. The city is open to reviewing and accepting any maintenance report example the Contractor can provide that meets the criteria below.

This report shall contain, as a minimum, the following information on every traffic signal in the system:

- Time and date the maintenance (Unscheduled, Preventive, Emergency or Extra) work was performed. • All pending repair work needed at each intersection.
- Time the contractor received service calls, , arrival time at the intersection, response time, and the number of hours spent for each repair.
- A complete record of all work that was performed on the traffic signal equipment during the time period covered by the report, including the make, model, and serial number of any replacement components or other equipment newly installed at each intersection and the make, model and serial number of any replaced components. • Detailed cost breakdown for non-routine work is required.
- Invoices will not be paid until the Monthly Report submittal covering the billing period, which is being invoiced is received by The City. A signed Performance Report needs to be attached to the Monthly Maintenance Report. • List of new materials purchased and replaced or upgraded and proof of purchase and Warranty information. •

The City of Arvada expects to receive the Monthly Maintenance Report in Digital (MS Word or MS Excel) and Hard Copy format. The city is open to reviewing and accepting any maintenance report example the Contractor can provide that meets the criteria listed above.

#### Warranty Service:

The Contractor shall guarantee the work against defective material or workmanship for one (1) year from the completion date of the work. Damage due to acts of nature or from sabotage and/or vandalism is specifically excepted from the guarantee.

When defective material and/or workmanship are discovered that require repairs to be made under this guarantee, all such work shall be done by the Contractor at its own expense within five (5) calendar days after written notice of such defects has been given to the Contractor by the City. Should the Contractor fail to repair such defective material or workmanship within five (5) calendar days thereafter, the City may cause the necessary repairs to be made and charge

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the Contractor with the actual cost of all labor and materials required. In emergencies demanding immediate attention, if the Contractor is unable to respond, the City shall have the right to repair the defect and charge the Contractor with the actual cost of all labor and material required.

Any repair work performed as herein specified shall be done under the provisions of the original contract specifications. During the warranty period, the Contractor is expected to coordinate warranty repairs with the appropriate manufacturer or installing contractor. The Contractor shall notify the City of any undue delays by the manufacturer or installing contractor in responding to warranty requests and provide a detailed summary of the nature and reason for said warranty requests.

#### Preventive Maintenance:

The contractor shall implement a preventive maintenance program to extend the lifespan of traffic signal equipment and reduce the likelihood of unexpected failures. This includes annual equipment assessments, preemptive replacements, and predictive maintenance practices.

The City of Arvada is in the process of developing a fiscally constrained **Master Signal Maintenance Plan**. The Contractor and Manager of Traffic Operations and Maintenance will review the previous Annual Preventive Maintenance Plan (2019 through 2021), Master Maintenance Plan, service calls, a combination of unscheduled traffic signal maintenance and emergency calls and identify an appropriate strategy and approach to develop a practical annual preventive maintenance plan for the City of Arvada.



The City of Arvada will preserve the right to identify the frequency and items required to be inspected as part of the preventive maintenance initiative.

**TE's (Traffic Engineering) Traffic Signal Maintenance Handbook** states that it can be reasonably argued that the frequency and severity of response maintenance calls can be significantly reduced provided that a proper program of preventive maintenance is in place with the appropriate level of training for the technicians who respond. Small preventive maintenance tasks help keep the intersection operating properly and will extend the life of some components. Performing them is time well spent according to ITE's Traffic Signal Maintenance Handbook. Preventive maintenance provides the means for identifying and correcting problems before they turn into more costly repairs.

A sample preventive maintenance is attached. The sample checklist is from ITE's (Institute of Transportation Engineers) Traffic Signal Maintenance Handbook.

Process to Initiate the Work:

*Authorization, Communication, & Documentation:*

- The Contactor and Manager of Traffic Operations and Maintenance will craft a Preventive Maintenance template to serve this initiative. The Contractor can provide a sample of a Preventive Maintenance template, which can be revised to meet the City of Arvada's needs .
- The Manager of Traffic Operations and Maintenance will identify the intersections and the frequency that need to be inspected.
- Requests for preventive maintenance not generally included in Scheduled Traffic Signal Maintenance are made via a Work Order (WO).
- WOs will be originated by the Manager of Traffic Operations and Maintenance (MTOM) during normal City business hours.
- The WO will include the list of intersections to be inspected. The Contractor Should expect WOs at the beginning of the year or any time during the year to initiate the preventive maintenance initiative as appropriate. The WO will be signed off by The Manager of Traffic Operations and Maintenance or City Traffic Engineer.
- While initial contact with the Contractor may be directly by phone, this will always be followed up with a written WO. Delivery of WO's may be via fax, US mail, e-mail, telephone or courier and will be made directly to the Contractor's designated contact.
- The City will maintain preventive maintenance logs on all signal work completed as part of this task. ● Asset Management files shall be updated whenever any equipment tracked within the files is upgraded or replaced.

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Unscheduled Traffic Signal Maintenance:

Includes tasks not specifically included in Scheduled Traffic Signal Maintenance that are not considered emergency in nature and are performed as requested by the city to ensure that all traffic signal systems and equipment operate safely and continuously in good working order. The Contractor shall perform unscheduled traffic signal maintenance on all traffic signals, ped crossings, fire crossings and school flashers within the City. Common Unscheduled Traffic Signal Maintenance tasks include, but are not limited to the following

- Troubleshooting detection issues
- Fix stuck ped buttons
- Repair damaged heads or equipment
- Signal Timing Revisions/Adjustments
- Assist in inspection of signal construction work performed by other contractors.

The process to Initiate the Work:

*Authorization, Communication & Documentation:*

- The contractor will be provided with a weekly unscheduled maintenance task list by the Manager of Traffic Operations and Maintenance on the Friday of each week .

- The contractor shall provide a schedule for completing each maintenance list item no later than **Tuesday** of the following week.
- The task list will be shared via a cloud-based document (i.e., Google Sheets or MS 365 Excel File S). It is expected that the Contractor's superintendent will review and assess each issue. Any further clarifications will be discussed the following **Monday**, during the **Weekly maintenance meeting**.
- The City shall be notified in writing upon the completion of each maintenance item and update the cloud-based document. This notification must contain the date of the completed work, a description of the work completed, task order or WO (*to be included in the monthly invoice*) as well as a notification of any necessary additional work needed.
- Any hardware components that are included in the Assets Management and replaced or upgraded, the Assets Management system should be updated.

#### Emergency Repairs:

Emergency Traffic Signal Maintenance includes unforeseen maintenance-related tasks that must be performed on short notice due to potential impacts on public safety and convenience.

The contractor shall be available on a 24/7 basis including holidays to respond to emergency repair calls related to traffic signals. Emergency repairs include situations where signal components are non-functional, posing a risk to public safety or causing traffic congestion. The contractor shall aim to respond to emergency calls within a **maximum of two hours from the time of notification**.

To restore normal operation, CONTRACTOR shall furnish and install a substitute controller unit and/or cabinet, if so directed by COUNTY, that is capable of providing the same signal operation, insofar as phasing and times, until the existing controller unit and/or cabinet can be returned to service or be replaced.

Emergency Unscheduled Traffic Signal Maintenance tasks include, but are not limited to the following:

- Flash calls
- All out calls
- Knockdowns
- Conflicting indications
- Any situation that can be considered unsafe.

#### The Process to Initiate the Work:

##### *Authorization, Communication & Documentation:*

- The contractor shall provide you with a local or toll-free telephone number which will be contacted during non business hours, weekends and legal holidays to handle emergency calls.
- In addition to the phone call the emergency task will be listed and shared via a cloud-based document (i.e., Google Sheet or MS 365 Excel File).
- It is expected that the Contractor's superintendent will review and assess each issue which will be discussed on the following **Monday** at the Weekly maintenance meeting.

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- Requests for service after working hours, on weekends, and on holidays will be forwarded from the City's Emergency On-Call representative to the Contractor by phone.
- A WO will be generated on the next regular business day. The WO will be signed off by the Manager for Traffic Operations and Maintenance or City Traffic Engineer.
- The City shall be notified in writing upon the completion of each emergency maintenance item and update the cloud-based document. This notification must contain the date of the completed work, a description of the work completed, task order or WO (*to be included in the monthly invoice*) as well as a notification of any necessary additional work needed.
- Any hardware components which are included in the Assets Management and replaced or upgraded, the Assets Management system should be updated.
- The Contractor shall maintain dispatch records for the emergency works and will be provided to the City upon request.

#### Extra work or Planned Maintenance Work:

At any time during the term of this contract, the City may request that the contractor perform Extra Work. As used herein, "Extra Work" means any work which is determined by the City to be necessary for the proper completion of the contractor's services, but which the parties did not reasonably anticipate would be necessary at the execution of this contract. the contractor shall not perform, nor be compensated for, Extra Work without prior written authorization from the City.

#### Type of Works:

- Signal Installation Repair or Modification: This work consists of repairing or modifying any existing signal installation's features or components.
- Signal Under Construction Component Testing: This work includes testing detector loops and detector lead-in cables for megohm reading, continuity, frequency and inductance, and testing and certifying controller cabinets and control equipment. CITY shall determine the documentation and certifications CONTRACTOR shall furnish CITY as part of this work.
- Signal Timing Installation: This work consists of entering new timing plans or altering existing timing plans in the direction of CITY.
- Signal Power Turn-On: This work consists of controller cabinet component operation, signal installation feature testing, problem diagnosis, and other related tasks necessary to accomplish a successful turn-on.
- Equipment Testing and Inspection: This work consists of services to inspect and test traffic signal equipment and components as requested by CITY.
- Training: This work consists of the CONTRACTOR training CITY staff in the use and/or programming of signal installation components.

These maintenance reports should be easily readable in an excel format emailed to the Manager of traffic operations for the City of Arvada.

#### Locates:

Utility locates, often referred to as underground utility locating or simply "locates," are the process of identifying and marking the precise locations of underground utility lines, cables, conduits, and other infrastructure. These underground utilities can include water and sewer pipes, electrical cables, natural gas lines, telecommunications cables, and more. Utility locates are essential to prevent accidental damage to these vital services and infrastructure during excavation, construction, or maintenance activities.

The contractor agrees to provide utility locate services to the City for the duration of the contract.

The contractor shall respond to calls for Emergency locates in under two hours. All other locate calls should have a response time of under one week.

#### Street Lights:

The City of Arvada owns approximately 300 streetlights and outdoor lighting fixtures that would be maintained under this contract.

#### The Process to Initiate the Work:

##### *Authorization, Communication & Documentation:*

- Requests for unscheduled signal maintenance not generally included in Scheduled Traffic Signal Maintenance are made via a Work Order (W O).
- WO's will be originated by City staff during normal City business hours in response to observed or reported maintenance deficiencies.
- While initial contact with the Contractor may be directly by phone, this will always be followed up with a written WO. Delivery of WO's may be via fax, US mail, e-mail, telephone or courier and will be made directly to the Contractor's designated contact.
- The WO will include the traffic signal maintenance issue. The Contractor should expect a list of WOs at the beginning of the week or month as appropriate. The WO will be signed off by the Manager for Traffic Operations and Maintenance or The City Traffic Engineer.

- The city expects that the Contractor will assess the needs requested through WO and provide a schedule and cost estimate to complete the work in 5 -7 business days.
- Any hardware components which are included in the Assets Management and replaced or upgraded, the Assets Management system should be updated.

#### Communications:

- **Telephone Communications:** Business Hours Contractor shall provide City with a local or toll-free telephone number which may be contacted from 8:00 a.m. to 5:00 p.m., Monday through Friday, excluding City holidays for routine business and service calls.
- **Telephone Communications:** Non- Business Hours Contractor shall also provide the City with a local or toll-free telephone number which may be contacted during non- business hours, weekends and legal holidays to handle emergency calls.  
The business hours and non-business hours contact numbers shall be answered by a live person capable of contacting Maintenance personnel and relaying instructions from the City.
- **E-mail, Cloud Drive & Document Communications:** The City will issue and store Work Orders for all non routine, emergency, and preventive maintenance works and new work electronically (via E-mail or share from a cloud drive). At a minimum the contractor shall be able to receive, print and reply to e-mails and access the cloud drive. The list of Unscheduled Traffic Signal Maintenance tasks list will be shared using a cloud document.

#### Regulations and Standards:

#### Safety Measures:

The contractor shall implement safety protocols to ensure the safety of personnel, motorists, and pedestrians during maintenance activities. This includes the use of proper signage, safety equipment, and adherence to established safety procedures.

#### Contract Duration:

The initial contract shall be for a period of [1] year, with the option of 4 renewals. Performance will be reviewed 90 days prior to initial contract expiration. The Termination clauses and procedures shall be outlined in the contract agreement.

#### Compensation:

Compensation for services rendered shall be based on a mutually agreed-upon pricing structure. Payment terms, including invoicing and payment schedule, shall be detailed in the contract. Detailed in the awarded contract.

#### Contractor Qualifications:

All Contractors submitting proposals must describe their background and qualifications as it relates to the following: 1. Describe the Organizational Structure for supporting the City of Arvada's Signal, Lighting and Locates programs. Please identify the key personnel with appropriate roles and responsibilities and availability for this program.

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2. Describe your past 3 years of experience operating Citywide locates, traffic signal and lighting maintenance programs.
3. Describe your familiarity with any and all laws, statutes, rules, and regulations for these types of projects. 4. Describe your process for managing and implementing a traffic signal scheduled, Unscheduled, Preventive, and Emergency maintenance program.
5. Provide appropriate and active examples that demonstrate the high degree of sustainable customer satisfaction that your company achieved working for local jurisdictions. Please specify how you achieved such a high degree of sustainable customer satisfaction and provide references for these examples.

This scope of work is subject to negotiation and modification as necessary to meet the specific needs of the City of Arvada and the selected maintenance contractor. However, The City of Arvada reserves the full right to define the scale and extent of negotiations and modifications.

Measurement and Payment:

Payment for Preventive Maintenance:

Compensation for Preventive Traffic Signal Maintenance tasks shall be in accordance with the unit prices shown on the Schedule of Values included with the Contractor's Proposal. The Contractor's price proposal for Preventive Traffic Signal Maintenance shall be considered inclusive of all materials, equipment, labor, and traffic controls necessary to perform the work in accordance with Technical Specifications as per the City of Arvada's Engineering Standard.

Payment for Unscheduled and Emergency Maintenance:

Compensation for Emergency and unscheduled Street Light and Traffic Signal Maintenance work shall be on a Time and Materials basis in accordance with the cost quote submitted to and approved by the City. The Contractor's cost quoted for Unscheduled Extra Work shall include the full cost for furnishing all materials, labor, tools, equipment, temporary traffic controls, and incidentals and for doing all work involved in completing Unscheduled Extra Work in accordance with these Technical Specifications and as directed by the Manager for Traffic Operations and Maintenance.

Payment for Extra Work or Planned Maintenance:

Compensation for Extra Work or Planned Street Light and Traffic Signal Maintenance shall be in accordance with the independent cost quotes submitted to and approved by the City for the work requested. The Contractor's cost quoted for Extra Work or Planned Maintenance shall include the full cost for furnishing all materials, labor, tools, equipment, temporary traffic controls and incidentals and for doing all work involved in completing Extra Work or Planned Maintenance in accordance with these Technical Specifications, an approved Work Order and as directed by the Manager for Traffic Operations and Maintenance.

**Cost Schedule**

The Estimated Quantities are given to provide Proposers with an indication of the potential order of magnitude and scope of work for a one-year period. The actual amount of work done under this contract may differ considerably from the quantities shown. The City of Arvada reserves the right to increase or decrease the amount of any item of work or to omit items of work without adjusting the unit prices.

Part I – Annual or Semi-Annual Preventive Traffic Signal Maintenance

Fixture Type	Quantity	Rate Per Service	Total Annual Cost (\$)
Traffic Signals	98		
Pedestrian Signal	14		
Crosswalk Beacons	20		
School Flashers	80		
Speed Radars			

Part II – Rates for Unscheduled and Emergency Works

The following Hourly Rates and Equipment Rates shall apply to work not covered under the unit prices included in the Part I. Hourly Rates and Equipment Rates shall include all costs to supply the necessary labor and equipment including, but not limited to, overhead and profit.

<i>Service Equipment</i>	<i>Hourly Rate</i>
--------------------------	--------------------

1. Service Truck	
2. Service Truck with Arrow Board	
3. Arrow Board	
4. Dump Truck	
5. Air Compressor	
6. Bucket Truck	
7. Boom Truck (Crane)	
8. Concrete Saw	
9. Other (Describe_____)	
10. Other (Describe_____)	

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<b><i>Personnel</i></b>	<b><i>Regular Hourly Rate</i></b>	<b><i>Overtime Hourly Rate</i></b>
1. Field Technician Supervisor		
2. Field Superintendent		
3. Electrical Technician		
4. Field Technician		
5. Laborer		
6. Crane Operator		
7. Bench Technician		
8. Other (Describe_____)		
9. Other (Describe_____)		
10. Traffic Control Supervisor		
11. Program Manager		

### Part III – Typical Traffic Control Cost Schedule

Please provide a standard list of Pay Items for Traffic Control to conduct Unscheduled and Emergency Maintenance Works. A few Pay items are listed below. Please include other pay items as you feel appropriate based on your working

Pay Item	Until	Cost(\$)
• Temporary Protection & Direction of Traffic	LS	
• Temporary Signs	SF	
• Temporary Barricade II and III	EACH	
• Flaggers	Hour	
• Temporary Illumination	LS	
• Temporary Traffic Signal	LS	
• Portable Changeable Message Signs	Each	
• Temporary Plastic Drums	Each	
• Temporary Delineators	Each	
• Other (Describe _____)		
Other (Describe _____)		

### Guarantee:

Excepting only items of routine maintenance, ordinary wear, and unusual abuse or neglect, the Contractor shall guarantee all work executed by the Contractor and Subcontractors, and all supplies, materials, and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Contract, to be free of all defects of workmanship and materials for a period of one year after acceptance of work as a part of the Contract by the City. Note: All valid manufacturer's Warranties for various traffic signal equipment shall be honored. The contractor shall repair or replace any or all such work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to the City.

In the event that the Contractor shall fail to comply with the conditions of the foregoing guarantee within ten (10) working days after being notified of the defect in writing, City shall have the right, but shall not be obligated to repair or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair.

Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs, which may be required as determined in the sole discretion and judgment of the City.

Full compensation for conforming to the requirements of this section shall be considered as included in the Contract prices paid for the various Contract items of work and no additional compensation will be allowed, therefore.

*END OF STATEMENT OF WORK*

**REQUIRED VENDOR SUBMITTAL FORM**

**SUBMITTED BY:**

Company Name: \_\_\_\_\_

Contact Names: Sales/Customer Service \_\_\_\_\_

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

Phone: (\_\_\_\_\_) \_\_\_\_\_ Email(s): \_\_\_\_\_

- The undersigned hereby affirms that:
- He/she is a duly authorized agent of the vendor;
  - He/she has read all Terms and Conditions and technical specifications made available in conjunction with this solicitation and fully accepts and acknowledges this offer is consistent with the specifications and terms and conditions, unless specific variations have been clearly and expressly listed in the offer.
  - The Offer is in all respects fair, without outside collusion or otherwise illegal action.

By: \_\_\_\_\_  
Signature of Authorized Agent Date FEIN \_\_\_\_\_

\_\_\_\_\_  
Typed/Printed Name of Agent Title of Agent Agent email

\_\_\_\_\_  
Typed/Printed Name of Witness Title of Witness Witness email



**PAYMENT TERMS:** If the vendor does not accept a percentage discount, the City standard is net thirty (30) days after the date that the City receives an accurate invoice and has accepted the product or service. Payment is the date of the check mailing or date of the credit card transaction.

Discount: \_\_\_\_ % \_\_\_\_ Days, Net: 30 Days, Accept Visa without additional fee? \_\_\_\_\_

**VARIATIONS:** The vendor shall identify all variations and exceptions to any RFP documents. Submittal of a Vendor Contract is considered excessive in Variations and may be cause for determining that the Bid/Offer is non-responsive and ineligible for award. For each variation listed, reference the applicable section of the solicitation document as per the example below. If no variations are listed here, it is understood that the vendor's Offer fully complies with all terms and conditions. Attach additional Variation sheets in the same format as below after starting the first three on this page.

Page #: \_\_\_\_\_ Item # or Section: \_\_\_\_\_

Variance \_\_\_\_\_

Page #: \_\_\_\_\_ Item # or Section: \_\_\_\_\_

Variance \_\_\_\_\_

Page #: \_\_\_\_\_ Item # or Section: \_\_\_\_\_

Variance \_\_\_\_\_

**SUBMITTAL INSTRUCTIONS:**

Proposals shall be submitted in the order listed below with each section clearly identified. **Missing information or required documents may result in submission being deemed non-responsive.**

- Submit ON-LINE at BidnetDirect.com. Your company name should be the first word naming the pdf file.
- Cover & Executive Summary.
- Detail Firm's and employees' Capabilities, Experience, Licensing, and Compliance Status.
- Details of Proposal – Proposed products & services, implementation timeline and warranties.
- Completed, signed Required Vendor Submittal Form, Performance Measures Form (if applicable), and all other attachments specifically requested.
- Pricing – All fee and costs associated with the proposal.
- Insurance – Checking this box accepts that the insurance requirements listed by the City are acceptable unless listed in the variations on the previous page.
- CONFIDENTIAL information, if any, MUST be stamped as such on each page and submitted separately.
- Please initial to acknowledge Addenda, if any, have been considered in your proposal:  
#1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_

**REFERENCES:**

Check here if Firm's standard reference sheet is attached, otherwise, use the space below.

Name: \_\_\_\_\_

Contact Person: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

Describe type of work/service performed or items supplied: \_\_\_\_\_

Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

Describe type of work/service performed or items supplied: \_\_\_\_\_

Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

Describe type of work/service performed or items supplied: \_\_\_\_\_

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**VENDOR NAME: SOLICITATION # 243-PW-013****PERFORMANCE MEASURES FORM INSTRUCTIONS:**

The City has incorporated Performance Management into its organizational culture. When vendors submit offers to the City in response to solicitations for **Services** (not associated with the primary purchase of goods, supplies, or software), they shall identify the methods and goals by which the City will monitor and report on the Vendor's performance providing those services to the City. Vendor's performance shall be documented as to (a) Price/Cost, (b) Punctuality/Responsiveness (c) Quality/Reliability, and (d) Sustainability/or Innovation.

1. Vendor will define 1-2 measures for (a) Price/Cost, (b) Punctuality/Responsiveness (c) Quality/Reliability, and (d) Sustainability/or Innovation, that follow S.M.A.R.T goals: Specific, Measurable, Achievable, Relevant, and Timely, per category.

2. The awarded vendor will be evaluated by the City per these defined metrics 2 months prior to contract renewal. The department will review with the vendor any measures needing improvement.

**SERVICES means:** the furnishing of labor, time, effort, maintenance, etc., by a vendor/contractor/consultant, with an initial contract amount of more than \$15,000.

## (a) Price/Cost

*Example Measure: Consultant will submit detailed invoices substantiating amounts requested.* 1.

\_\_\_\_\_  
 \_\_\_\_\_ 2.  
 \_\_\_\_\_  
 \_\_\_\_\_

## (b) Punctuality/Responsiveness

*Example Measure: Reporting of project status will occur monthly with the City and consultant's Project Manager.*

1. \_\_\_\_\_  
 \_\_\_\_\_ 2.  
 \_\_\_\_\_  
 \_\_\_\_\_

## (c) Quality/Reliability

*Example Measure: Revisions are drafted within two weeks, and no more than 3 revisions prior to final draft.*

1. \_\_\_\_\_  
 \_\_\_\_\_ 2.  
 \_\_\_\_\_  
 \_\_\_\_\_

(d) Sustainability and/or Innovation

*Example Measure: Digital reports delivered to the City 95% of the time will to reduce the use of paper.* 1.

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*Performance measures will be queried for every year of the contract. Performance measures reporting will be considered when renewing or awarding a contract with a vendor.*

# **Exhibit B**

**An Agreement Between The City Of Arvada And  
Lighthouse Transportation Group, LLC For Goods And Services  
Relating To On-Call, Preventative, & Scheduled Traffic Signal  
Maintenance In An Amount Not To Exceed \$490,000.00**



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# Lighthouse

## **A. Cover Letter & Executive Summary**

To Whom It May Concern  
City of Arvada  
8101 Ralston Road,  
Arvada, CO 80002

Thank you for the opportunity to bid on the Arvada 2024 Traffic Signal Maintenance contract. Lighthouse is a small, local, traffic signal contractor located in the Denver Metro Area that began operations in 2022.

Since inception, Lighthouse has grown to 35 employees and has active maintenance/service contracts with 15 agencies (municipalities, towns, counties, state) for both traffic signal and lighting service. We have a strong core of highly motivated and experienced individuals, and we are trying to build strong and lasting relationships. We see our relationships as partnerships, and we're not your average contractor. Lighthouse has a few key differentiators from the industry –

### Owner-Operated

Lighthouse has no outside investment, no debt, and is not driven by the need to return profits to shareholders. We are driven by hard quality work and believe money is the result of operational excellence and great partnerships. We choose relationships over dollars.

### Experience

Lighthouse management employees average 10+ years of experience in the industry and maintain certifications such as: Professional Engineer, Master Electrician, Electrician, IMSA Level 3 Techs, IMSA Level 2 Techs, Crane & Digger Derrick Operators, Fiber Technicians, Communication Technicians, and more.

### Partnership-Minded

Lighthouse aims to be a true partner as opposed to a contractor. This comes with partnership responsibilities such as: great communication, timely service, and the ability to be a one-stop-shop for all traffic signal needs.

### Diversity

Lighthouse is a DBE certified with CDOT and the City & County of Denver, and SBE, MWBE, and EBE certified with the City & County of Denver. We maintain one of the most diverse workforces in the traffic signal industry.

Once again, we appreciate the opportunity to submit and thanks for taking the time to review our proposal.

Sincerely,  
John Behan, PE



# Lighthouse

## **B. Firms Assigned Staff Capabilities, Experience, Qualifications & Compliance Status**

<u>Name:</u>	<u>Title:</u>	<u>Experience:</u>	<u>Certifications:</u>
John Behan	Project Manager	9 years	Professional Engineer (Traffic)
Mauricio Acosta	Superintendent	8 years	IMSA Level 2
Erick Ruiz	Superintendent	12 years	IMSA Level 2

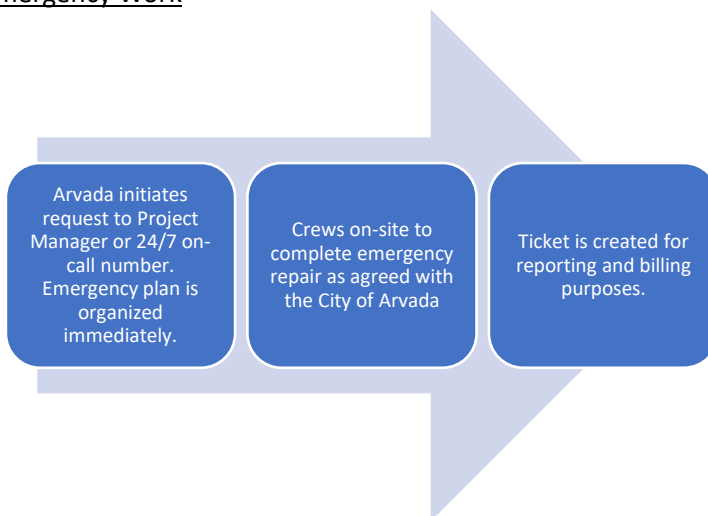
Lighthouse will provide additional resources as needed to support the City of Arvada in providing the highest quality level of service.

## **C. Details of Proposal**

Contractor Qualifications.

1. *Describe the Organizational Structure for supporting the City of Arvada's Signal, Lighting, and Locates programs. Please identify the key personnel with appropriate roles and responsibilities and availability for this program.*

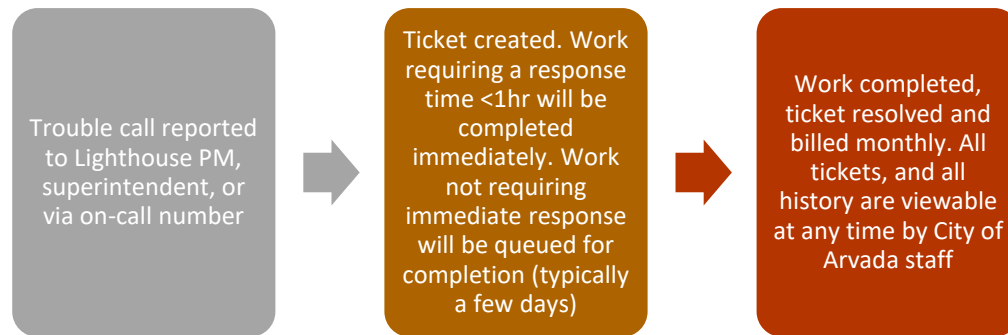
### Emergency Work



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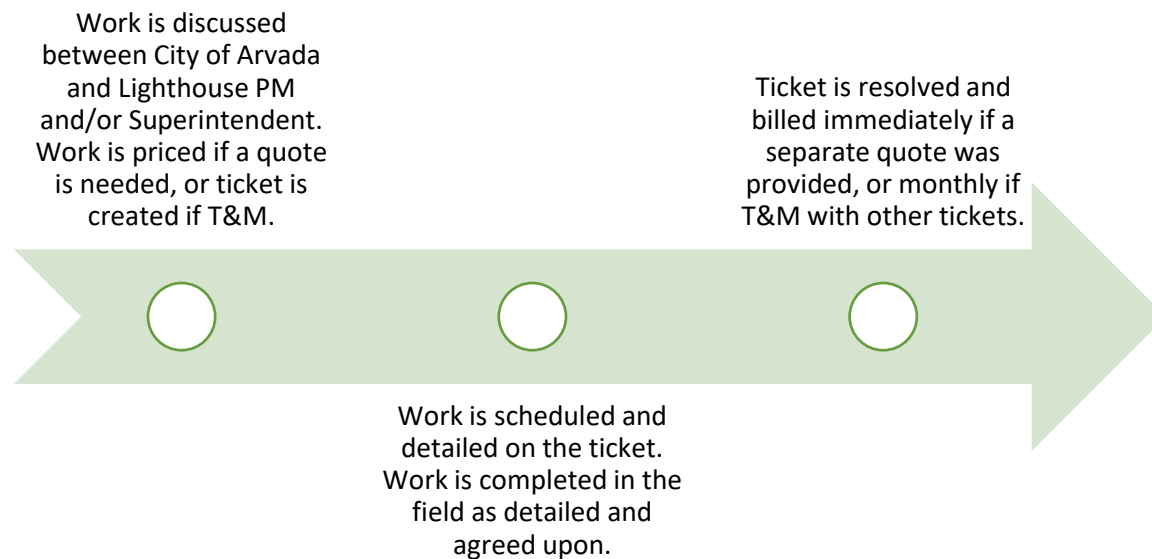
# Lighthouse

## Trouble Calls / Locates



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## Extra Work / APMs / Other





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## Lighthouse

2. *Describe your past 3 years of experience operating Citywide locates, traffic signal and lighting maintenance programs.*

—  
Lighthouse began our service department in January of 2023. Since this point, we have acquired 15 service contracts with agencies such as: Jefferson County, Douglas County, CDOT, City of Aurora, and others.

As part of these contracts, Lighthouse maintains traffic signals, lighting, and citywide locates for both facilities. We believe we've been successful in creating partnerships with the agencies that we work for.

- 3. *Describe your familiarity with any and all laws, statutes, rules, and regulations for these types of projects.*

—  
Lighthouse maintains a professional engineer, master electrician, and traffic signal technicians on-staff. Thus, we are familiar with the following laws, statutes, rules and regulations:

MUTCD, ADA, PROWAG, Colorado 811 Laws, NEC, and more.

- 4. *Describe your process for managing and implementing a traffic signal scheduled, unscheduled, preventative, and emergency maintenance program.*

—  
Lighthouse maintains a successful maintenance program by categorizing issues into different buckets of priorities, response times, and communication.

**Emergency Response** – get the job done immediately.

**Locates / Routine Trouble Calls** – Lighthouse has an automated administrative process ensuring these items are not missed and do not involve Lighthouse management time.

**Extra Work / APM Schedules / Etc.** – Lighthouse works with the agency's staff to properly scope the needed work and make recommendations based on best practices and cost efficiency. Once the ticket is created and work defined, it gets queued for work through the automated administrative process.

- 5. *Provide appropriate and active examples that demonstrate the high degree of sustainable customer satisfaction that your company achieved working for local jurisdictions. Please specify how you achieved such a high degree of sustainable customer satisfaction and provide references for these examples.*





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## Lighthouse

—

One example of high customer satisfaction Lighthouse provided was during a tornado event in Highlands Ranch. Lighthouse is the service contractor for Douglas County, the owner of the signals. Lighthouse mobilized a crew of over 15 individuals (75% of the company at that time) to respond to 15+ signals with issues including a cabinet knockdown. Lighthouse had all signals back in operation by midnight the same day and the response started at ~5pm.

Another example is Lighthouse started maintenance with Arapahoe County and the previous maintenance contractor determined that loops needed to be replaced at one intersection, and a new RRFB system was needed at another intersection. Lighthouse troubleshooted the issues and determined the loops did not need to be replaced and only a splice was bad, and a loop card was needed, saving Arapahoe County thousands of dollars. On the RRFB, the motherboard was bad due to water damage, but the entire RRFB did not need to be replaced. The board was a fraction of the cost of the RRFB, again saving the County money.

Lighthouse aims to achieve a high degree of sustainable customer satisfaction through great communication, and putting our employees on jobs they excel at. We work efficiently but take the additional time needed to troubleshoot correctly and implement the best solution for taxpayer dollars.

—



# Lighthouse

## D. Previous Projects of Similar Size, Scope, with References

Jurisdiction:	Type of Work:	Since:	Reference:	Contact Info:
Jefferson County	Traffic Signal On-Call Emergency Repair	2023	Adam James	ajames@co.jefferson.co.us
Douglas County	Traffic Signal / On-Call	2023	Mark Zink	mzink@douglas.co.us
City of Englewood	Traffic Signal, Lighting	2023	Shawn Delmargo	sdelmargo@englewoodco.gov
South Metro Fire	Traffic Signal On-Call	2023		Randy.nejbauer@southmetro.org
City of Aurora	Traffic Signal, Lighting	2023	Carlie Campuzano	ccampuza@auroragov.org
CDOT R4	Traffic Signal, Lighting	2023	Rod Dudley	Rodrick.dudley@state.co.us
CDOT R1	Traffic Signal	2023	Alvin Stamp	Alvin.stamp@state.co.us
Town of Superior	Traffic Signal	2023	Alex Bullen	alexb@superiorcolorado.gov
City of Lafayette	Traffic Signal	2023	Michelle Melonakis	Michelle.melonakis@lafayetteco.gov
Arapahoe County	Traffic Signal	2023	Karl Packer	kpacker@arapahoegov.com
City of Castle Pines	Traffic Signal	2023	Larry Nimmo	Larry.nimmo@castlepinesco.gov
Highlands Ranch Metro District	Traffic Signal, Lighting	2023	John Donakowski	jdonakowski@highlandsranch.org
Castle Pines Metro District	Lighting	2023	Steve Granie	sgranie@castlepinesmetro.com
City of Centennial	Traffic Signal	2023	Anna Bunce	abunce@centennialco.gov
City of Fort Collins	Traffic Signal	2023	Britney Sorenson	bsorenson@fcgov.com
Town of Parker	Traffic Signal	2024	Dave Aden	daden@parkeronline.org

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# Lighthouse

## **E. Completed City Submittal Forms**

See attached following pages.

## **F. Fee Schedule / Cost Proposal**

See attached following pages.

**Guarantee:**

Excepting only items of routine maintenance, ordinary wear, and unusual abuse or neglect, the Contractor shall guarantee all work executed by the Contractor and Subcontractors, and all supplies, materials, and devices of whatsoever nature incorporated in, or attached to the work, or otherwise delivered to City as a part of the work pursuant to the Contract, to be free of all defects of workmanship and materials for a period of one year after acceptance of work as a part of the Contract by the City. Note: All valid manufacturer's Warranties for various traffic signal equipment shall be honored. The contractor shall repair or replace any or all such work or material, together with all or any other work or material which may be displaced or damaged in so doing, that may prove defective in workmanship or material within said one-year guarantee period without expense or charge of any nature whatsoever to the City.

In the event that the Contractor shall fail to comply with the conditions of the foregoing guarantee within ten (10) working days after being notified of the defect in writing, City shall have the right, but shall not be obligated to repair or obtain the repair of, the defect and Contractor shall pay to City on demand all costs and expense of such repair.

Notwithstanding anything herein to the contrary, in the event that any defect in workmanship or material covered by the foregoing guarantee results in a condition which constitutes an immediate hazard to the health or safety, or any property interest, or any person, City shall have the right to immediately repair, or cause to be repaired, such defect, and Contractor shall pay to City on demand all costs and expense of such repair. The foregoing statement relating to hazards to health, safety or property shall be deemed to include either temporary or permanent repairs, which may be required as determined in the sole discretion and judgment of the City.

Full compensation for conforming to the requirements of this section shall be considered as included in the Contract prices paid for the various Contract items of work and no additional compensation will be allowed, therefore.

*END OF STATEMENT OF WORK*

John Behan

Digitally signed by John Behan  
DN: C=US,  
E=john.behan@lighthouseg.org,  
O="Lighthouse Transportation  
Group, LLC", CN=John Behan  
Date: 2024.01.29 10:04:42-07'00'

REQUIRED VENDOR SUBMITTAL FORM

SUBMITTED BY:

Company Name: Lighthouse Transportation Group, LLC

Contact Names: Sales/Customer Service John Behan

Address: 11861 Bradburn Blvd, Westminster, CO 80031

Phone: ( 303 ) 898-9116 Email(s): john.behan@lighthouseg.org

The undersigned hereby affirms that:

- He/she is a duly authorized agent of the vendor;
- He/she has read all Terms and Conditions and technical specifications made available in conjunction with this solicitation and fully accepts and acknowledges this offer is consistent with the specifications and terms and conditions, unless specific variations have been clearly and expressly listed in the offer.
- The Offer is in all respects fair, without outside collusion or otherwise illegal action.

By: John Behan	1/30/24	88-0943128
Signature of Authorized Agent	Date	FEIN
John Behan	Member/Manager	john.behan@lighthouseg.org
Typed/Printed Name of Agent	Title of Agent	Agent email
Samantha Larson	Business Manager	samantha.larson@lighthouseg.org
Typed/Printed Name of Witness	Title of Witness	Witness email

PAYMENT TERMS: If the vendor does not accept a percentage discount, the City standard is net thirty (30) days after the date that the City receives an accurate invoice and has accepted the product or service. Payment is the date of the check mailing or date of the credit card transaction.

Discount: % Days, Net: 30 Days, Accept Visa without additional fee? No

VARIATIONS: The vendor shall identify all variations and exceptions to any RFP documents. Submittal of a Vendor Contract is considered excessive in Variations and may be cause for determining that the Bid/Offer is non-responsive and ineligible for award. For each variation listed, reference the applicable section of the solicitation document as per the example below. If no variations are listed here, it is understood that the vendor's Offer fully complies with all terms and conditions. Attach additional Variation sheets in the same format as below after starting the first three on this page.

Page #: N/A Item # or Section: N/A

Variance

Page #: Item # or Section:

Variance

Page #: Item # or Section:

Variance

**SUBMITTAL INSTRUCTIONS:**

Proposals shall be submitted in the order listed below with each section clearly identified. **Missing information or required documents may result in submission being deemed non-responsive.**

- ☐ Submit ON-LINE at BidnetDirect.com. Your company name should be the first word naming the pdf file.
- ☐ Cover & Executive Summary.
- ☐ Detail Firm's and employees' Capabilities, Experience, Licensing, and Compliance Status.
- ☐ Details of Proposal – Proposed products & services, implementation timeline and warranties.
- ☐ Completed, signed Required Vendor Submittal Form, Performance Measures Form (if applicable), and all other attachments specifically requested.
- ☐ Pricing – All fee and costs associated with the proposal.
- ☐ Insurance – Checking this box accepts that the insurance requirements listed by the City are acceptable unless listed in the variations on the previous page.
- ☐ CONFIDENTIAL information, if any, MUST be stamped as such on each page and submitted separately.
- ☐ Please initial to acknowledge Addenda, if any, have been considered in your proposal:  
#1 \_\_\_\_\_ #2 \_\_\_\_\_ #3 \_\_\_\_\_

**REFERENCES:**

- ☒ Check here if Firm's standard reference sheet is attached, otherwise, use the space below.

Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

Describe type of work/service performed or items supplied: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

Describe type of work/service performed or items supplied: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_ Contact Person: \_\_\_\_\_

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

Telephone No: \_\_\_\_\_ Email: \_\_\_\_\_

Describe type of work/service performed or items supplied: \_\_\_\_\_

\_\_\_\_\_

**PERFORMANCE MEASURES FORM INSTRUCTIONS:**

The City has incorporated Performance Management into its organizational culture. When vendors submit offers to the City in response to solicitations for **Services** (not associated with the primary purchase of goods, supplies, or software), they shall identify the methods and goals by which the City will monitor and report on the Vendor's performance providing those services to the City. Vendor's performance shall be documented as to (a) Price/Cost, (b) Punctuality/Responsiveness (c) Quality/Reliability, and (d) Sustainability/or Innovation.

1. Vendor will define 1-2 measures for (a) Price/Cost, (b) Punctuality/Responsiveness (c) Quality/Reliability, and (d) Sustainability/or Innovation, that follow S.M.A.R.T goals: Specific, Measurable, Achievable, Relevant, and Timely, per category.
2. The awarded vendor will be evaluated by the City per these defined metrics 2 months prior to contract renewal. The department will review with the vendor any measures needing improvement.

**SERVICES means:** the furnishing of labor, time, effort, maintenance, etc., by a vendor/contractor/consultant, with an initial contract amount of more than \$15,000.

(a) Price/Cost

*Example Measure: Consultant will submit detailed invoices substantiating amounts requested.*

1. Lighthouse will submit invoices by the 10th of the month for the previous month with a detailed breakdown of labor, equipment, material, and subcontract hours/dollars.
2. \_\_\_\_\_

(b) Punctuality/Responsiveness

*Example Measure: Reporting of project status will occur monthly with the City and consultant's Project Manager.*

1. Lighthouse maintains a ticket system that can be seen by Arvada staff which includes the history of all tickets. Monthly reporting will detail what tickets have been completed, what tickets are active, and the status of each open action item.
2. Lighthouse will commit to meeting any deadlines for emergency work, extra work, or other set by the City of Arvada.

(c) Quality/Reliability

*Example Measure: Revisions are drafted within two weeks, and no more than 3 revisions prior to final draft.*

1. Lighthouse will warranty all labor for a period of 1yr or as specified in the contract, whichever is greater.
2. Lighthouse provides a 24/7, 365 on-call system which receives a response directly by the on-call technician with 99% + success.

(d) Sustainability and/or Innovation

*Example Measure: Digital reports delivered to the City 95% of the time will to reduce the use of paper.*

1. All Lighthouse work is digital and no paper will be used unless required by City of Arvada.
2. Lighthouse leverages software and innovative processes in operations to maximize responsiveness for quotes and extra work, and for high quality reports and history providing data in a usable format.

*Performance measures will be queried for every year of the contract. Performance measures reporting will be considered when renewing or awarding a contract with a vendor.*

## Part I – Annual or Semi-Annual Preventive Traffic Signal Maintenance

Fixture Type	Quantity	Rate Per Service	Total Annual Cost (\$)
Traffic Signals	98	\$750	\$73,500
Pedestrian Signal	14	\$500	\$7,000
Crosswalk Beacons	20	\$200	\$4,000
School Flashers	80	\$250	\$10,000
Speed Radars		\$200	\$ TBD



<i><b>Service Equipment</b></i>	<i><b>Hourly Rate</b></i>
1. Service Truck	\$50
2. Service Truck with Arrow Board	\$75
3. Arrow Board	\$25
4. Dump Truck	\$50
5. Air Compressor	\$25
6. Bucket Truck	\$50
7. Boom Truck (Crane)	\$150
8. Concrete Saw	\$25
9. Other (Describe <u>Mini-Excavator</u> )	\$50
10. Other (Describe _____)	

<b><i>Personnel</i></b>	<b><i>Regular Hourly Rate</i></b>	<b><i>Overtime Hourly Rate</i></b>
1. Field Technician Supervisor	\$100	\$125
2. Field Superintendent	\$100	\$125
3. Electrical Technician	\$100	\$125
4. Field Technician	\$100	\$125
5. Laborer	Included	Included
6. Crane Operator	\$100	\$125
7. Bench Technician	\$100	\$125
8. Other (Describe <u>Communications Engineer</u> )	\$150	\$175
9. Other (Describe _____)		
10. Traffic Control Supervisor	\$100	\$125
11. Program Manager	Included	Included

### Part III – Typical Traffic Control Cost Schedule

Please provide a standard list of Pay Items for Traffic Control to conduct Unscheduled and Emergency Maintenance Works. A few Pay items are listed below. Please include other pay items as you feel appropriate based on your working experiences:

Pay Item	Until	Cost(\$)
● Temporary Protection & Direction of Traffic	LS	\$1,000
● Temporary Signs	SF	\$10
● Temporary Barricade II and III	EACH	\$500
● Flaggers	Hour	\$50
● Temporary Illumination	LS	\$5000
● Temporary Traffic Signal **Temporary signal Trailer Only	LS	\$50,000
● Portable Changeable Message Signs	Each	\$5,000
● Temporary Plastic Drums	Each	\$50
● Temporary Delineators	Each	\$100
● Other (Describe _____)		
Other (Describe _____)		

EXHIBIT B  
INSURANCE REQUIREMENTS

## **CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including Professional/Pollution Liability / Protected Information**

1. All insurers must be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers should have an A.M. Best Company rating of at least A- VII.
3. Additional Insured - City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage – Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield.
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver – All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits– The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/ Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates – Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
  - a. the effective date of the Contract
  - b. the expiration date of any coverage
  - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the following:

Insurance Requirements - Including Professional/Pollution Liability		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"> <li>Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability.</li> </ul> <p><b>Note:</b> For contracts involving vendor/contractor contact with minors or at risk adults Sexual Abuse and Misconduct Coverage should be included in the coverage requirements.</p>	<b>Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Each Occurrence</li> <li>\$2,000,000 General Aggregate (Per project aggregate for construction contracts)</li> <li>\$2,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)</li> </ul>
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 each accident combined single limit.</li> <li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li> </ul>
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"> <li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li> </ul> <p><b>Note:</b> This requirement shall not apply when a contractor or subcontractor is exempt under the Colorado Workers' Compensation Act AND when such contractor or subcontractor provides an appropriate sole proprietor letter.</p>	<b>Employer's Liability with Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$100,000 Each Accident</li> <li>\$100,000 Each Employee by Disease</li> <li>\$500,000 Disease Aggregate</li> </ul>
4.	<b>Environmental Liability Insurance</b> <ul style="list-style-type: none"> <li>Contractor/Vendor will purchase an environmental liability policy covering bodily injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from contractor/vendors operations and completed operations.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Each Occurrence/Aggregate</li> </ul>
5.	<b>Professional Liability</b> <ul style="list-style-type: none"> <li>Contractor will purchase and maintain professional liability insurance covering any damages caused by an error, omission or negligent professional act to include the following coverages: <ul style="list-style-type: none"> <li>Limited Contractual Liability</li> <li>If coverage is Claims Made, a retroactive date prior to the inception of the work</li> <li>If coverage is Claims Made, similar coverage must be maintained for three years following the completion of the work or an extended reporting period of 36 months must be purchased</li> </ul> </li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Per Claim /Aggregate</li> </ul>
6.	<b>Protected Information (Cyber) Liability</b> <ul style="list-style-type: none"> <li>Contractor will purchase and maintain liability insurance covering all loss of confidential information, such as PII, PHI, PCI, Tax Information and CJI, and claims based on alleged violation of privacy rights through improper use or disclosure of protected information.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 per Claim</li> <li>\$2,000,000 General Aggregate</li> </ul>
<b>Additional Insured - The following shall be named an Additional Insured:</b> The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Pollution Liability, Excess/Umbrella Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.		
<b>Certificate Holder is:</b> City and County of Broomfield One DesCombes Drive		

Broomfield, CO 80020-2495  
[certificates@broomfield.org](mailto:certificates@broomfield.org)

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to [RiskManagement@broomfield.org](mailto:RiskManagement@broomfield.org)



**Proposed Resolution Mile High Water License Purchase - Two Tap Requests**

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Consent Items Item: 6C
Presented By	
Ken Rutt, Director of Public Works	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience	

## Overview

[View Correspondence](#)

The City and County of Broomfield and the Mile High Water Company entered into a Water Service Agreement dated June 1, 2004. ([Agreement](#)). During a Study Session on February 12, 2019, Council provided direction to eliminate the need to demonstrate a hardship and remove the three additional water licenses per year limit on future requests from Mile High Water Company.

Broomfield has received a written request from Mile High Water Company for two residential water licenses. The request was submitted on behalf of the property owners who reside at 14892 Kalamath Court, and 942 W. 149th Ave., Broomfield, CO 80023. The written request from Mile High Water Company states that the property owners have agreed to pay for the water license fees at the rates set forth in the Agreement and to pay for the installation costs of the new water services. Council has approved a total of 12 water license requests from Mile High Water since the Agreement became effective in June 2004.

### **Attachments**

[Memo for Mile High Water License Purchase - Two Tap Requests.pdf](#)

[Resolution No. 2024-98.pdf](#)

## Summary

### [View Correspondence](#)

The City and County of Broomfield and the Mile High Water Company entered into a Water Service Agreement dated June 1, 2004. ([Agreement](#)). During a Study Session on February 12, 2019, Council provided direction to eliminate the need to demonstrate a hardship and remove the three additional water licenses per year limit on future requests from Mile High Water Company.

Broomfield has received a written request from Mile High Water Company for two residential water licenses. The request was submitted on behalf of the property owners who reside at 14892 Kalamath Court, and 942 W. 149th Ave., Broomfield, CO 80023. The written request from Mile High Water Company states that the property owners have agreed to pay for the water license fees at the rates set forth in the Agreement and to pay for the installation costs of the new water services. Council has approved a total of 12 water license requests from Mile High Water since the Agreement became effective in June 2004. The dates of approval and corresponding addresses for these additional residential licenses are listed below:

- August 23, 2005 - 14730 Tejon Street
- December 20, 2005 - 1622 West 152nd Avenue
- September 12, 2006 - 1165 West 154th Avenue
- June 26, 2007 - 1990 West 150th Avenue
- September 11, 2018 - 15485 Lipan Street
- May 21, 2019 - 14614 Benton Street, 1780 West 152nd Avenue, and 2001 West 156th Avenue
- March 29, 2022 - 14540 Tejon Street
- April 12, 2022 - 15229 Navajo Street
- November 1, 2022 - 14975 Tejon Street
- May 14, 2024 - 12756 Polo Place

Proposed Resolution No. 2024-98 would approve Mile High Water Company's request for two (2) three-quarter-inch tap equivalent water licenses for the residential properties located at 14892 Kalamath Court, and 942 W. 149th Ave.

## Financial Considerations

Pursuant to the terms of the Agreement, Mile High Water Company must pay one and one-half times the current Broomfield residential water license fee of \$36,400, which totals \$54,600. If Council approves the request, and Mile High Water Company purchases the water licenses, \$109,200 in revenues will accrue to Broomfield's Water Fund.

## Prior Council or Other Entity Actions

- On June 1, 2004, Council approved [Resolution No. 2004-105](#) approving a Water Service Agreement with Mile High Water Company.
- On August 23, 2005, Council approved [Resolution No. 2005-135](#) for 14730 Tejon Street
- On December 20, 2005, Council approved [Resolution No. 2005-183](#) for 1622 West 152nd Avenue
- On September 12, 2006, Council approved [Resolution No. 2006-120](#) for 1165 West 154th Avenue
- On June 26, 2007, Council approved [Resolution No. 2007-102](#) for 1990 West 150th Avenue
- On September 11, 2018, Council approved [Resolution No. 2018-163](#) for 15485 Lipan Street
- On May 21, 2019, Council approved [Resolution No. 2019-128](#) for 14614 Benton Street, 1780 West 152nd Avenue, and 2001 West 156th Avenue



- On March 29, 2022, Council approved [Resolution No. 2022-49](#) for 14540 Tejon Street
- On April 12, 2022, Council approved [Resolution No. 2022-54](#) for 15229 Navajo Street
- On November 1, 2022, Council approved [Resolution No. 2022-130](#) for 14975 Tejon Street
- On May 14, 2024, Council approved [Resolution No. 2024-49](#) for 12756 Polo Place

## **Boards and Commissions Prior Actions and Recommendations**

N/A

## **Proposed Actions / Recommendations**

If Council desires to approve the request, the appropriate motion is...

**That Resolutions 2024-98 be adopted.**

## **Alternatives**

Do not approve Mile High Water Company's request for the water licenses.

# RESOLUTION NO. 2024-98

A Resolution Approving the Issuance of a Water License to Mile High Water Company

Be it resolved by the city council of the City and County of Broomfield, Colorado:

## Section 1.

That the City and County Manager or a designee thereof is authorized to issue two additional three-quarter-inch tap equivalent water licenses to Mile High Water Company for the benefit of the properties located at 14892 Kalamath Court, and 942 W. 149th Broomfield, CO 80023.

## Section 2.

This resolution is effective on the date of approval by the City Council.

Approved on August 13, 2024.

The City And County Of Broomfield,  
Colorado

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Office of the City and County Clerk

Approved As To Form:

*NCR*  
\_\_\_\_\_  
City and County Attorney



## City of Broomfield

### City Council Regular Meeting

#### Proposed Resolutions US 287/120th Sidepath Infill Construction Agreement

Meeting	Agenda Group	
Tuesday, August 13, 2024, 6:00 PM	Consent Items	Item: 6D
Presented By		
Brian Graham, CIP Manager		
Community Goals		
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community		

#### Overview

[View Correspondence](#)

The memo is requesting approval of Consulting Amendment 1 to the agreement between the City and County of Broomfield and Felsburg Holt & Ullevig for construction management, inspection and testing services for the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project. The memo is also requesting approval of a construction agreement between the City and County of Broomfield and Noraa Concrete Construction Corporation for the construction of the same project.

#### Attachments

[Council Memo US287\\_120th Sidepath Infill Construction Agreement.pdf](#)

[Resolution 2024-102 \(FHU\).pdf](#)

[FHU Agreement 120th Sidepath Infill \(1\).pdf](#)

[Resolution 2024-103.pdf](#)

[Standard Construction Agreement - 120th Sidepath Infill 07.12.2024-Noraa signed.pdf](#)

## Summary

### [View Correspondence](#)

Proposed Resolution No. 2024-102, would approve Consulting Amendment 1 to the agreement between the City and County of Broomfield and Felsburg Holt & Ullevig for construction management, inspection and testing services for the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

Proposed Resolution No. 2024-103, would approve a construction agreement between the City and County of Broomfield and Noraa Concrete Construction Corporation (Noraa) for the construction of the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

The 2020 Safer Main Streets (SMS) Initiative is a grant program developed by the Colorado Department of Transportation (CDOT) and the Denver Regional Council of Governments (DRCOG) that focuses on the safety of urban arterials.

This project is to design [missing sidepath sections](#) to improve pedestrian and sidepath bicycle access along US 287/120th Avenue, including improving pedestrian and bicycle access to existing transit stops and making accessibility improvements to pedestrian facilities at targeted intersections, crossings and driveways within the project area (Exhibit A). The project aims to create safe, continuous and accessible pedestrian and bicycle access on US 287/120th Avenue and its frontage road via sidepaths, improving pedestrian crossings at intersections, and enhancing access and safety at transit stops.

The US 287/120th Avenue Sidepath Infill & Transit Access Improvements project was one of 34 transportation projects awarded funding through the SMS Initiative. Broomfield was awarded design and construction funding totaling \$2,000,000 in State funding (80%), with \$500,000 in local matching funding (20%) for a total of \$2,500,000 for the project.

Upon subsequent evaluation of the estimated cost for the project, an additional \$480,000 of local matching funds were added, for a total of \$2,980,000 for the project.

In 2021, ACL, Inc. was selected to design the project. The fee for design services which included survey, engineering design, subsurface utility engineering, and land acquisition services (temporary easements only) was \$414,961.

A request for qualifications for construction management, inspection and testing services was posted to BidNet on May 7, 2024. These services are required as part of the federal grant. Four consultants submitted qualifications. Staff reviewed all qualifications and determined that Felsburg Holt & Ullevig was best qualified to perform the required construction management, inspection, and testing services on this project.

Broomfield entered into an agreement with Felsburg Holt & Ullevig in the amount of \$5,542 for pre-construction support services. An amendment to the contract for the necessary construction services was negotiated with Felsburg Holt & Ullevig for an additional \$272,263, bringing the total contract price to \$277,716.

An invitation to bid was posted to BidNet on June 7, 2024, and 5 contractors submitted bids by the bid opening on July 11, 2024.

The lowest responsive and responsible bidder was Noraa for \$1,911,579 and is recommended by staff to complete the project.

If the agreement is approved on August 13, 2024, construction is planned to begin in October 2024. Work is expected to be substantially completed by the second quarter of 2025.

Proposed Resolution No. 2024-102 would approve an agreement with Felsburg Holt & Ullevig for the construction management, inspection, and testing services for the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

Proposed Resolution No. 2024-103 would approve an agreement with Noraa for the construction of the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

## Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
Sources of Funds - 21Q0040	
80% Share: Safer Main Streets - DRCOG State Funded Grant	\$2,000,000
20% Share: City and County of Broomfield Local Funds	\$500,000
Additional City and County of Broomfield Local Funds	\$726,040
Design Services - ACL, Inc.	-\$414,961
Temporary Easement Acquisition	-\$11,860
Construction Management, Inspection, Testing - Felsburg Holt & Ullevig	-\$277,716
Construction - Noraa Concrete Construction Corporation	-\$1,911,579
10% Construction Contingency	-\$191,158
Projected Balance	418,766

## Prior Council or Other Entity Actions

On June 8, 2021 Council approved Resolution No. [2021-77](#), authorizing and approving an Intergovernmental Agreement Between the City and County of Broomfield and the Colorado Department of Transportation for the US 287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

On October 26, 2021 Council approved Resolution No. [2021-178](#) to adopt the 2022 budget for the City and County of Broomfield which included funding for the US287/120th Avenue Sidepath Infill & Transit Access Improvements.

On November 9, 2021 Council approved Resolution No. [2021-188](#), authorizing and approving a consulting agreement with ACL, Inc.

On October 25, 2022 Council approved Resolution [2022-112](#) approving the Third Budget Amendment to the 2022 City and County of Broomfield Budget for Capital and Operating Budget Adjustments adjusting the design and construction cost of the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

On January 24, 2023 Council approved Resolution No. [2023-26](#) for Amendment Two to the Agreement Between the City and County of Broomfield and ACL, Inc. for Engineering Design of the US 287/120th Avenue Sidepath Infill & Transit Access Improvements Project.

## **Boards and Commissions Prior Actions and Recommendations**

N/A

## **Proposed Actions / Recommendations**

If Council desires to proceed with the project the appropriate motion is...

**That Resolution 2024-102 be adopted, and**

**That Resolution 2024-103 be adopted.**

## **Alternatives**

Decide not to proceed with the project.

RESOLUTION NO. 2024-102

A resolution approving Amendment 1 to the Consulting Agreement by and between the City and County of Broomfield and Felsburg Holt & Ullevig for the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

Section 1.

Amendment 1 to the Consulting Agreement by and between the City and County of Broomfield and Felsburg Holt & Ullevig, for the US287/120th Sidepath Infill & Transit Access Improvements in the amount not to exceed \$277,716 is hereby approved.

Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the agreement, in form approved by the City and County Attorney.

Section 3.

The City and County Manager or a designee thereof is authorized to approve amendments to the agreement in an aggregate amount not to exceed ten percent.

Section 4.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024.

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Office of the City and County Clerk

Approved as to form:

*NCR*

\_\_\_\_\_  
City and County Attorney

CONSULTING AGREEMENT BY AND BETWEEN  
THE CITY AND COUNTY OF BROOMFIELD AND FELSBURG HOLT & ULLEVIG, INC.  
FOR THE US 287/120TH SIDEPATH INFILL AND  
TRANSIT IMPROVEMENT PROJECT

1. **PARTIES.** The parties to this Consulting Agreement (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and Felsburg Holt & Ullevig, Inc. (the “Consultant”), collectively, the “Parties,” or individually, a “Party.”
2. **RECITALS.** The recitals to this Agreement are incorporated herein by this reference as though fully set forth in the body of this Agreement.
  - 2.1. The City desires to obtain consulting services in connection with the **US287/120th Sidepath Infill & Transit Access Improvements Project** (the “Project”).
  - 2.2. The Consultant provides professional services and is qualified to perform services required by the City for the Project.
3. **TERMS AND CONDITIONS.** In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:
  - 3.1. **Obligations of the Consultant.**
    - 3.1.1. *General.* The Consultant shall consult with, advise, and represent the City as the City requires during the term of this Agreement. The Consultant shall act at the direction of the City employee assigned by the City to the Project as Project Manager. The Consultant shall communicate with the City about the Project only through the Project Manager.
    - 3.1.2. *Basic Services.* The Consultant shall perform the Basic Services described in Exhibit A attached hereto and incorporated by this reference and elsewhere in this Agreement.
    - 3.1.3. *Extra Services.* Upon the express, written approval of the City, the Consultant shall perform Extra Services. The Consultant shall charge the City for such Extra Services, if any, in accordance with such terms as the City may agree to in writing.
    - 3.1.4. *Authorization to Proceed.* No work on the Project shall be performed by the Consultant until written Authorization to Proceed has been issued by the City. If the Consultant proceeds with any work prior to receipt of said Authorization, the City is not responsible for payment for such work.



- 3.1.5. *Completion Date.* The Consultant shall complete the services of this Agreement within **45 days** following the date of the Authorization to Proceed.

3.2. Obligations of the City.

- 3.2.1. *General.* The City shall direct the work and coordinate reviews, approvals, and authorizations of all stages of work. All approvals and authorizations shall be in writing.
- 3.2.2. *Changes in Work.* Any changes with regard to the Consultant's cost, time requirements of performance, or scope of the work must be in writing and approved by the Parties hereto prior to any work or services being performed in contemplation of said change.
- 3.2.3. *Materials and Services to be Furnished by the City.* The City agrees to furnish the Consultant any material in the possession of the City to the extent that such material, in the opinion of the Project Manager, is readily available and will assist the Consultant in performing the work. The Consultant agrees to request such material in advance so as not to jeopardize the work schedule or meeting arrangements. The City shall not unreasonably withhold such material.

3.3. Commencement and Completion.

- 3.3.1. The Consultant shall commence work on the first working day following receipt of a written Authorization to Proceed issued by the City, or such later date as indicated in the Authorization to Proceed.
- 3.3.2. This section intentionally left blank.
- 3.3.3. If due to Acts of God, public emergency, or acts of a public enemy, it becomes apparent that this Agreement cannot be fully completed within the agreed time, the Consultant shall so notify the City in writing at least thirty days prior to any scheduled completion date, in order that the Consultant and the City may review the work accomplished to date and determine whether to amend this Agreement to provide additional time for completion.

3.4. Payments to Consultant.

- 3.4.1. *Aggregate Limit.* Unless extra services are approved in writing, the amount paid by the City to the Consultant under this Agreement will not exceed **\$5,453**, including reimbursables. The Consultant will complete the Work for the amount shown.
- 3.4.2. *Billing.* The Consultant shall bill the City monthly for work done in accordance with the terms and conditions of this Agreement, using the pay request form provided by the City.

- 3.4.3. *Payment by City.* The City will pay each bill in full within 30 days of receipt of payment request and supporting documentation. Consultant shall furnish such additional documentation as the City shall reasonably require. Incorrect payments to the Consultant due to omission, error, fraud, or defalcation may be recovered from the Consultant by deduction for subsequent payments due to the Consultant under this Agreement or other contracts between the City and the Consultant.
- 3.4.4. *Inspection of Records.* The Consultant will permit the authorized agents and employees of the City at reasonable hours, to inspect, review, and audit all records of the Consultant related to this project and the work to be performed hereunder.
- 3.5. Termination.
- 3.5.1. *For Cause.* This Agreement may be terminated by either party for a material breach of this Agreement by the other party not caused by any action or omission of the terminating party by giving the other party written notice at least five (5) days in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach.
- 3.5.2. *Without Cause.* In addition to the foregoing, this Agreement may be terminated by the City, in whole or in part, for its convenience and without cause of any nature by written notice to the Consultant. In the event of termination, the Consultant shall incur no additional expenses and shall perform no further services for the City under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the City. The City shall pay the Consultant for all work satisfactorily performed prior to receipt of the notice of termination and for other services required by the City to be completed prior to termination and satisfactorily performed.
- 3.5.3. *Upon Termination.* In the event of such termination, the Consultant will be paid for all services rendered to the date of termination, and upon such payment, all obligations of the City to Consultant under this Agreement will cease. Furthermore, in the event of such termination, the Consultant shall promptly deliver to the City all drawings, electronic data, computer programs, computer input and output, plans, photographic images, analyses, tests, maps, surveys, and written materials of any kind generated in the performance of this Agreement up to and including the date of termination. Termination pursuant to this subsection shall not prevent either party from exercising any other legal remedies which may be available to it.
- 3.5.4. *Dispute Resolution.* A Party seeking to terminate for cause must notify the other Party of its intent and provide written notice specifying the facts supporting any alleged material breach. Within fourteen (14) days

after receipt of such notice, the Parties shall meet to resolve the matters described in the written notice. If either Party believes that mediation would assist in resolving the matters described in the written notice, the Parties shall participate in mediation with a mutually acceptable mediator, to be conducted no later than sixty (60) days after receipt of the written notice of intent to terminate for cause. Mediation shall take place in Broomfield, Colorado and the Parties agree to split the costs of mediation.

- 3.6. Suspension. Without terminating this Agreement or breaching its obligations hereunder, the City may, at its pleasure, suspend the services of the Consultant hereunder. Such suspension may be accomplished by giving the Consultant written notice one (1) day in advance of the suspension date. Upon receipt of such notice, the Consultant shall cease its work in as efficient a manner as possible so as to keep his total charges to the City for services under the Agreement to the minimum.
- 3.7. Laws to be Observed. The Consultant shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees.
- 3.8. Permits and Licenses. The Consultant shall procure all permits and licenses, pay all charges, fees and taxes and give all notices necessary and incidental to the due and lawful prosecution of its services.
- 3.9. Patented Devices, Materials, and Processes. The Consultant shall hold and save harmless the City from any and all claims for infringement, by reason of the use of any patented design, device, material, process, any trademark, or copyright and shall indemnify the City for any costs, attorney's fees, expenses and damages which it might be obligated to pay by reason of infringement, at any time during the prosecution or after completion of the work.

#### 4. INSURANCE AND INDEMNIFICATION.

##### 4.1. Standard of Care.

- 4.1.1. *Professional Liability*. The Consultant shall exercise in its performance of the Basic Services and Extra Services, if any, the standard of care normally exercised by locally recognized consulting organizations engaged in performing comparable services. The Consultant shall be liable to the City for any loss, damage, or cost incurred by the City for the repair, replacement, or correction of any part of the Project that is

deficient or defective as a result of any failure of the Consultant to comply with this standard.

4.1.2. *Indemnification.* The Consultant shall indemnify, defend and hold harmless the City and its agents and employees from and against all claims, damages, losses, and expenses, including, but not limited to, reasonable attorneys' fees, arising out of or resulting from the performance of the Basic Services or Extra Services, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease, or death or injury to or destruction of tangible property (other than the Project itself), including the loss of use resulting therefrom, and (2) is caused by any negligent act or error or omission of the Consultant, any subconsultant of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this paragraph 4.1.2. **Further, this indemnification is intended to comply with and be subject to Section 13-50.5-102 (8), C.R.S. as amended from time to time.**

4.1.3. *No Limitation on Claims.* In any and all claims against the City or against any of its agents or employees by any employee of the Consultant, any subconsultant of the Consultant, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under subparagraph 4.1.2 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Consultant or any subconsultant under Workers' Compensation Act of Colorado or other employee benefit legislation.

#### 4.2. Insurance.

4.2.1. *Purchase and Maintain Insurance.* In order to assure the City that the Consultant is always capable of fulfilling specified indemnification obligations, Consultant shall purchase and maintain insurance, from an insurer with an AM Best FSR rating of A- or higher, of the kind, in the amounts, and subject to the conditions shown in the Insurance Requirements attached as Exhibit B.

4.2.2. *Coverage.* Said insurance shall be maintained in full force and effect during the term of this Agreement and shall protect the Consultant, its employees, subconsultant, agents and representatives, and the City from claims for damages for personal injury and wrongful death and for damages to property arising in any manner from acts or omissions of the Consultant, its employees, agents or representatives, in the performance of the services covered herein. The insuring company will provide thirty-day written notice prior to any alteration or cancellation of the above-referenced insurance.

4.2.3. *Valuable Papers.* Furthermore, the Consultant shall carry valuable papers insurance in an amount sufficient to assure the restoration of any plans, drawings, field notes or other similar data related to the services covered by this Agreement in the event of their loss or destruction until such time as the final submission by the Consultant has been made and accepted by the City.

5. NOTICE AND AUTHORIZED REPRESENTATIVES. Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Consultant. The Consultant shall not replace the Consultant Representative unless: (a) the City requests a replacement, or (b) the Consultant terminates the employment of the Consultant Representative and provides a satisfactory substitute. The City must approve a substitute Consultant Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

5.1. The City designates **Kelly Behling** as the authorized representative of the City under this Agreement. Email address is [kbehling@broomfield.org](mailto:kbehling@broomfield.org).

5.2. Consultant designates **Jenny Young** as the authorized representative of the Consultant under this Agreement. Email address is [jenny.young@fhueng.com](mailto:jenny.young@fhueng.com).

If the Consultant is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to [citycountyattorney@broomfield.org](mailto:citycountyattorney@broomfield.org).

6. INDEPENDENT CONTRACTOR. The Consultant is an independent contractor as described in C.R.S. § 8-40-202(2). The Consultant is not entitled to workers' compensation benefits and is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.

7. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Consultant shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall provide the appropriate insurance as required for the Consultant under this Agreement. The Consultant shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Consultant without the express written consent of the City.

8. NO THIRD-PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the Parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a Party hereto.
9. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Consultant. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Consultant. The City's fiscal year is currently the calendar year.
10. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
11. CONFLICTS WITHIN THE CONTRACT DOCUMENTS. In the event that conflicts exist within the terms and conditions of this Agreement and the attached or referenced Agreement documents or exhibits the former shall supersede.
12. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Consultant invoice, Consultant timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Consultant's rights and obligations shall be solely governed by the terms and conditions of this Agreement.
13. SEVERABILITY. If any provision of this agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances or the validity, or enforceability of the Agreement as a whole.
14. ADDITIONAL DOCUMENTS OR ACTION. The Parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.



15. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.
16. DOCUMENTS. All drawings, computer programs, computer input and output, analyses, plans, photographic images, tests, maps, surveys, electronic files, and written material of any kind generated in the performance of this Agreement or developed by the Consultant specifically for the Project are and shall remain the exclusive property of the City. The Consultant shall not provide copies of any such material to any other party without the prior written consent of the City.
17. RECORDS RETENTION. The Consultant shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Consultant for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.
18. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Consultant, to solicit or secure this Agreement.
19. ASSIGNMENT. This Agreement shall not be assigned by the other Party without the prior written consent of the City.
20. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.
21. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.
22. DELAYS. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, strikes, labor disputes, accidents, regulations or orders of civil or

military authorities, shortages of labor or materials, or other causes, similar or dissimilar, which are beyond the control of such Party.

23. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.
24. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
25. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any Party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either Party.
26. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Any claims or litigation arising under this Agreement will be brought by the Parties solely in the District Court, Broomfield County, Colorado.
27. SURVIVAL OF OBLIGATIONS. The obligations contained in this Agreement that are not fully performed as of termination shall survive termination and shall continue to bind the Parties until fully performed.
28. LAWS TO BE OBSERVED. The Consultant shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees.
29. EXECUTION; ELECTRONIC SIGNATURES. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The




Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, this Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_ July 11, 2024.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

 Digitally signed by Katie Allen  
DN: cn=Katie Allen,  
ou=City and County of Broomfield,  
o=City and County of Broomfield,  
email=kallen@broomfield.org,  
c=US  
Date: 2024.07.08 15:46:23 -0600

\_\_\_\_\_  
City and County Engineer

APPROVED AS TO FORM:

 \_\_\_\_\_  
City and County Attorney

**CONSULTANT:**

**Felsburg Holt & Ullevig, Inc.**

By: Jenny A. Young

Name: Jenny Young, PE, AICP

Address: 6400 S. Fiddlers Green Cir, #1500  
Greenwood Village, CO 80111

## EXHIBIT A

### BASIC SERVICES

*The Basic Services are as described below in the attached scope and fee dated July 2, 2024.*

July 2, 2024

Broomfield 287 \ I20th CM Budget PRECONSTRUCTION EFFORTS							
FHU LABOR							
Employee	6/1/2024	7/1/2024	8/1/2024	9/1/2024	Total HRS	Billing Rate	TOTAL Amount
<b>Principal In Charge</b>							
Executive Support		0.25	0.25	0.25	0.75	\$ 310.00	\$ 232.50
<b>Project Manager</b>							\$ -
Quality Assurance and Quality Control Reviews	1	1	1	1	4	\$ 290.00	\$ 1,160.00
<b>Senior Engineer</b>							
Pre-Construction Bid Document Review and Conferences	4	4	4	4	16	\$ 235.00	\$ 3,760.00
Submittal Review and Estimate Approval					0	\$ 235.00	\$ -
Traffic Control Review, Erosion Control Review, Change Order, Project Coordination					0	\$ 235.00	\$ -
Finals Documentation Review, Approval and LA Submittal					0	\$ 235.00	\$ -
<b>Construction Technician III</b>							
Construction observation and inspection					0	\$ 130.00	\$ -
<b>Construction Administrator</b>							
B2GNow and Invoicing					0	\$ 105.00	\$ -
<b>TOTAL AMOUNT</b>						<b>\$</b>	<b>5,152.50</b>
<b>Mileage</b>							
	Total Days Billed		Rate		Total Amount		
Senior Engineer	2	2	2	6.00	\$ 50.00	\$	300.00
Construction Technician III				-	\$ 50.00	\$	-
<b>TOTAL AMOUNT</b>						<b>\$</b>	<b>300.00</b>
<b>Materials Testing</b>							
Geocal	<b>TOTAL AMOUNT</b>						
<b>TOTAL ESTIMATED FEE</b>						<b>\$</b>	<b>5,452.50</b>

EXHIBIT B  
INSURANCE REQUIREMENTS

## **CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including Professional Liability**

1. All insurers must be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers should have an A.M. Best Company rating of at least A- VII.
3. Additional Insured - City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage – Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver – All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits – The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/ Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates – Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
  - a. the effective date of the Contract
  - b. the expiration date of any coverage
  - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

**Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the following:**

<b>Insurance Requirements - Including Professional Liability</b>		
	<b>COVERAGES AND LIMITS OF INSURANCE</b>	<b>Required</b>
1.	<b>Commercial General Liability</b> Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability.  <b>Note: For contracts involving vendor/contractor contact with minors or at-risk adults, Sexual Abuse and Misconduct Coverage should be included in the coverage requirements.</b>	<ul style="list-style-type: none"> <li>• \$1,000,000 Each occurrence</li> <li>• \$2,000,000 General Aggregate (Per Project)</li> <li>• \$2,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)</li> </ul>
2.	<b>Automobile Liability</b> Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).	<ul style="list-style-type: none"> <li>• \$1,000,000 combined single limit</li> <li>• If hazardous materials are transported, an MCS 90 form shall be included on the policy</li> </ul>
3.	<b>Workers' Compensation</b> Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.  This requirement shall not apply if exempt under Colorado Workers' Compensation Act, AND when providing the sole proprietor waiver form.	Employer's Liability with Minimum Limits: <ul style="list-style-type: none"> <li>• \$100,000 Each Accident</li> <li>• \$100,000 Each Employee by Disease</li> <li>• \$500,000 Disease Aggregate</li> </ul>
4.	<b>Professional Liability</b> Contractor will purchase and maintain professional liability insurance covering any damages caused by an error, omission or negligent professional act to include the following: Coverages: <ul style="list-style-type: none"> <li>• If coverage is Claims Made, a retroactive date prior to the inception of the work</li> <li>• If coverage is Claims Made, similar coverage must be maintained for three years following the completion of the work or an extended reporting period of 36 months must be purchased</li> </ul>	Minimum Limit: <ul style="list-style-type: none"> <li>• \$1,000,000 Per Claim</li> <li>• \$2,000,000 General Aggregate</li> </ul>
<b>Additional Insured - The following shall be named an Additional Insured:</b> The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Umbrella Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.  <b>Certificate Holder is:</b> City and County of Broomfield One DesCombes Drive Broomfield, CO 80020-2495 <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a>		

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to [RiskManagement@broomfield.org](mailto:RiskManagement@broomfield.org)



RESOLUTION NO. 2024-103

A resolution approving the Construction Agreement by and between the City and County of Broomfield and Noraa Concrete Construction Company for the US287/120th Avenue Sidepath Infill & Transit Access Improvements Project

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

Section 1.

The Construction Agreement by and between the City and County of Broomfield and Noraa Concrete Construction Company, for the US287/120th Sidepath Infill & Transit Access Improvements in the amount not to exceed \$1,911,579 is hereby approved.

Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the agreement, in form approved by the City and County Attorney.

Section 3.

The City and County Manager or a designee thereof is authorized to approve change orders in an aggregate amount not to exceed ten percent.

Section 4.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024.

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Office of the City and County Clerk

Approved as to form:

*NCR*

\_\_\_\_\_  
City and County Attorney

**CONSTRUCTION AGREEMENT FOR THE  
US 287/120TH SIDEPATH INFILL & TRANSIT ACCESS IMPROVEMENTS PROJECT**

1. **PARTIES.** The parties to this Construction Agreement (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and **Noraa Concrete Construction Corporation** (the “Contractor”), collectively, the “Parties,” or individually, a “Party.”
2. **RECITALS.** The Recitals to this Agreement are incorporated herein by this reference as though fully set forth within the body of this Agreement.
  - 2.1. The City, seeking construction services for the US 287/120th Sidepath Infill & Transit Access Improvements Project completed a competitive selection process by invitation to bid issued on **June 7, 2024** (“ITB”).
  - 2.2. The Contractor’s response to the above referenced ITB was determined to be the lowest, responsible, responsive bidder to the City for the procurement of the services requested.
  - 2.3. The Parties therefore desire to enter into a Construction Agreement for completion of the services further described herein.
3. **TERMS AND CONDITIONS.** In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:
  - 3.1. **Work.** The Contractor agrees to furnish all necessary labor, materials, equipment, tools, and services necessary to perform in a workmanlike manner the work (hereinafter “Work”) as detailed in the Scope of Work described below and incorporated by this reference.
    - 3.1.1. ***Key Personnel.*** The Contractor’s key personnel shall include (i) the **Project Executive, Lori J. Kaiser**; (ii) the **Field Superintendents, Jorge Sanchez and John O’Brien** and (iii) the **Project Managers, Jay Swenson and Cassie Kaiser**. The Contractor’s obligation to provide adequate staffing is not limited to providing the key personnel, but is determined by the needs of the Project. The Contractor shall not replace any of the key personnel without the City’s prior written approval, which shall not be unreasonably withheld. If any of the key personnel become unavailable to perform services in connection with this Agreement due to death, illness, discharge or resignation, then the Contractor shall promptly appoint a replacement acceptable to the City. The City shall be entitled to complete information on each such replacement, including a current resume of his or her qualifications and experience.

3.2. Contract Documents. The Contract Documents shall consist of the following:

- 3.2.1. This Agreement; and
- 3.2.2. The US287/120th Sidepath Infill Construction Plans for Project No. 21Q00404 by ACL, Inc., dated May 1, 2024 (the "Scope of Work") including any revisions under ad;
- 3.2.3. The Contractor's Bid dated July 11, 2024, attached hereto as Exhibit A; and
- 3.2.4. The ITB; and
- 3.2.5. Any change orders and contract amendments, as applicable; and
- 3.2.6. Colorado Department of Transportation Standard Specifications for Road and Bridge Construction (2021), as amended; and
- 3.2.7. The Insurance Requirements attached hereto as Exhibit B,

all of which are incorporated by reference as though set forth in full herein, whether or not attached hereto and shall form an integral part of this Contract. If there is any conflict between this Agreement and the other Contract Documents, this Agreement shall control.

3.3. Access and Inspection. The City and its representatives shall at all times have access to the Work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. All materials, equipment and supplies used in the performance of the Work shall be subject to adequate inspection and testing in accordance with generally accepted standards. The City Representative may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing at no additional cost. The Contractor shall provide all labor, tools, materials, equipment and supplies necessary to comply with the request of the City Representative. If any portion of the Work is determined to be defective, the Contractor shall bear all costs involved to bring the Work into compliance with the Agreement, including without limitation the cost to replace any materials, to re-perform or to reconstruct. The Contractor shall remove from the work site all work or materials rejected by the City for failure to comply with the Contract whether incorporated in the Work or not at no additional cost to the City.

3.4. Site Clean-Up. On a daily basis, the Contractor shall maintain the work site free from accumulation of waste materials or rubbish caused by performance of the Work. The Contractor shall remove all rubbish, tools, construction equipment, machinery, and surplus material from the work site. If the Contractor fails to maintain the work site in an appropriate condition, the City may, after notice to the Contractor, perform any necessary clean-up and charge the clean-up costs to the Contractor.

- 3.5. Protection of Property. All existing finishes, structures, utilities, services, roads, trees, shrubbery, etc. located on City property and adjacent property impacted by the Work shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to the satisfaction of the City within three (3) weeks of the notification of such damage, which may be extended with written approval of the City.
- 3.6. Utilities. The Contractor shall fully comply with the provisions of Article 1.5 of Title 9 of the Colorado Revised Statutes including, but not limited to, providing notices to the notification association. Unless otherwise provided in the Scope of Work, the Contractor shall be responsible for communicating and coordinating with utilities, as necessary. The Contractor shall cooperate with utilities and the City as provided in this Agreement and as required by law. The Contractor shall be responsible for determining the exact location of utilities that may interfere with construction of the Work by exploratory excavation sufficiently in advance of beginning construction in an area so that potential conflicts may be resolved. The Contractor will consider in the Contract Price all of the utility appurtenances within the project; and the Contractor shall not make a claim for delay or additional compensation due to any relocation operations by a utility.
- 3.7. Documents on Site. The Contractor shall maintain at the site for the City one electronic or hard copy of all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction. At the City's option, the referenced record drawings will be reviewed monthly by the City for acceptability. If, in the judgment of the City, the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.
- 3.8. Differing Site Conditions. The Contractor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and review of the Contract Documents.
- 3.8.1. Contractor shall give immediate written notice to the City Representative if it encounters a "Differing Site Condition," defined as either:
- 3.8.1.1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or

3.8.1.2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract.

3.8.2. Contractor acknowledges that no request for a change order or modification in Contract Price resulting from a Differing Site Condition shall be allowed unless immediate written notice is provided and the conditions remain undisturbed until the City has the opportunity to investigate.

4. Completion Date. Within ten (10) calendar days of receipt of executed Agreement, the Contractor shall provide the City acceptable bonds, if applicable, and certificates of insurance. A Notice to Proceed will be issued upon City approval of the bonding and insurance. The Contractor shall perform no Work until the City Representative issues a Notice to Proceed.

The Contractor shall begin the Work on or before the fifth (5th) calendar day after receipt of the Notice to Proceed. The Notice to Proceed will stipulate the date on which the contract time count commences (the "Start Date"). The Contractor shall complete the Work and fulfill all of its other obligations within one hundred eighty (180) calendar days of the Start Date (the "Completion Date"). The time between the Start Date and the Completion Date shall be known as the "Contract Time."

All time limits are of the essence in this Agreement. The Contractor acknowledges that a notice to proceed will not be issued until the City has received acceptable certificates of insurance and bonds, if applicable.

5. CONTRACTOR'S PROJECT SCHEDULE. The Contractor shall submit a completion schedule for the Work (the "Project Schedule") beginning with receipt of the signed Agreement and concluding with Project Completion prior to the commencement of the Work and shall coordinate on a daily basis with the City's project manager. The Project Schedule shall include all lead time for the order and delivery of equipment for the Work. Schedule updating shall be done on a **weekly basis**, or more often as necessary (each a "Schedule Update"). The revision shall indicate actual progress to date, changes resulting from change orders, and planned changes as necessary to complete the Work in accordance with the Contract Documents. All costs associated with the development and maintenance of the Project Schedule shall be borne by the Contractor. Acceptance by the City of the Contractor's Project Schedule does not relieve the Contractor of any of its responsibility whatsoever for the accuracy or feasibility of the Project Schedule, or of the Contractor's ability to meet the Contract Time, nor does such acceptance expressly or impliedly warrant, acknowledge or admit the reasonableness of the activities, duration, or cost loading of the Contractor's Project Schedule.

6. UNUSUALLY SEVERE WEATHER CONDITIONS.

- 6.1. It is expressly understood and agreed, by and between the Contractor and the City, that the Contract Time for the completion of the Work is a reasonable time, taking into consideration the climatic and economic conditions and other factors prevailing in the locality of the Work. The Contract Time anticipates "Normal" weather and climate conditions in and around the vicinity of the project site during the times of year that the construction will be carried out. Extensions of time based upon weather conditions shall be granted only if the Contractor demonstrates clearly that such conditions were "unusually severe," would not have been reasonably anticipated, and that such conditions adversely affected the Contractor's Work and thus required additional time to complete the Work.
- 6.2. The following specifies the procedure for the determination of time extensions for unusually severe weather. The listing below defines the anticipated number of calendar days lost to adverse weather for each month and is based upon National Oceanic and Atmospheric Administration (NOAA) or similar data for the geographic location of the project.

ANTICIPATED CALENDAR DAYS LOST TO ADVERSE WEATHER CONDITIONS:												
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
7	5	4	3	3	2	2	2	2	3	3	7	43 day

- 6.3. The above schedule of anticipated adverse weather will constitute the baseline for monthly (or portion thereof) weather time evaluations. Upon acknowledgement of the notice to proceed and continuing throughout the Agreement on a monthly basis, actual adverse weather days and the impact of adverse weather days that delay the Work will be recorded on a day-to-day basis. It is assumed that the Work will be carried out Mondays through Fridays (holidays excepted); however, non-standard work hours will be required as specified in the Statement of Work and as shown on the Project Schedule. The number of calendar days of delayed Work due to adverse weather or the impact thereof will then be compared to the monthly adverse weather schedule above.

- 6.4. An actual adverse weather day must prevent Work for 50 percent or more of the Contractor's workday, delay Work critical to the timely completion of the Project, and be documented by the Contractor. The Contractor shall notify the City Representative in writing if work cannot proceed on a given date, within two calendar days of that date. The City will use the above written notification in determining the number of calendar days for which Work was delayed during each month.
- 6.5. At the end of each month if the number of calendar days for which Work was delayed due to adverse weather exceeds that shown in the above schedule a change order will be executed which increases the Contract Time.
- 6.6. The Contractor's Project Schedule must reflect the above-anticipated adverse weather delays on all weather-dependent activities. While extension of time shall be granted for "unusually severe" weather or climate conditions, or the impact thereof, the City shall make no monetary compensation for any costs to the Contractor arising out of such delays. The Contractor shall comply with the portions of the Contract Documents relating to its Project Schedule and amendments thereto which result from the "unusually severe" weather condition.
7. **PRICE AND PAYMENT.** The City shall pay the Contractor for performance of the Work an amount not to exceed **\$1,911,578.50** (the "Contract Price") based upon the unit prices set forth on Contractor's Bid attached hereto as Exhibit A and in accordance with the following schedule:
  - 7.1. If the Contractor is satisfactorily performing the Agreement, the City shall make partial payments at the end of each calendar month or as soon thereafter as practicable of ninety-five percent (95%) of the Contract Price based on the calculated value of the Work completed (the "Partial Payments") and shall retain five percent (5%) of the amount due to the Contractor (the "Retained Amount") until the Work is complete. If applicable, the Contractor shall make payments to its subcontractors in accordance with C.R.S. §24-91-103.
  - 7.2. The City shall retain the Retained Amount until Final Acceptance (as defined in Final Acceptance and Final Payment below). If the Contractor has completed the Work in a manner finally acceptable to the City, the City may authorize final payment from the Retained Amount upon written request by invoice of the Contractor (the "Final Payment"). Before the Final Payment is made, the City and the Contractor, as applicable, shall comply with the Final Acceptance and Payment paragraph of this Agreement.
  - 7.3. The Contractor shall, as soon as practicable after the end of each calendar month during performance of the Work, submit an itemized invoice for services performed, stating the percentage of the Work that has been completed and

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the type of services performed. Each invoice will also include an Application and Certificate of Payment form (AIA Document G702) or equivalent form approved by the City. The Contractor shall prepare the invoices at its sole cost and shall include sufficient detail to enable the City to verify the appropriateness of the invoice. Each invoice shall be subject to review and approval by the City Representative. The City shall not be required to pay disputed items until the dispute is resolved. Payment of any invoice shall not act as a waiver of the City's right to recover in full any over-payment revealed by any subsequent audit or inspection. No air travel, car rental, entertainment, education expense, meals or similar or related costs shall be payable without prior written approval of the City. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments due the Contractor under this Contract or other contracts between City and Contractor.

- 7.4. Change Orders. The Contractor will do nothing to cause the Contract Price to increase without prior execution of a change order by the City. The City will issue no change order requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to exceed the amount appropriated for this Agreement. Except as provided below and as provided in C.R.S. 24-91-103.6, the City shall have no duty or obligation whatsoever to compensate or to reimburse the Contractor for any additional work not specifically authorized as provided herein. In the event (i) the City requires additional compensable work to be performed by the Contractor prior to the execution or other finalization of a change order or contract amendment, and (ii) the Contractor has submitted to the City an estimate of the cost for the additional compensable work, then the City shall reimburse the Contractor for the costs associated with such additional work on a periodic basis in accordance with the terms of this Agreement.

8. FINAL INSPECTION AND FINAL PAYMENT.

- 8.1. Final Inspection. The Contractor shall notify the City when the Work is complete and ready for final inspection by means of a letter of completion (the "Letter of Completion"). Within ten (10) calendar days of the City's receipt of the Letter of Completion, the City Representative shall make a final inspection to determine whether the Work has been completed in accordance with this Agreement and shall submit a written list of any defects to the Contractor (the "Punchlist"). The Contractor shall promptly correct all Punchlist items without additional cost to the City within ten (10) calendar days after receipt of the Punchlist. If any Punchlist item cannot be corrected within ten (10) calendar days, the Contractor shall submit a letter to the City Representative for approval requesting an extension of time to complete such item (the "Request for Extension"). The Request for Extension must be received by the City Representative within seven (7) calendar days of the Contractor's receipt of the

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Punchlist and shall include the Contractor's justification for the request and a schedule for completion of the Punchlist item. The Contractor shall also deliver to the City, all statements to support state sales and use tax refunds and any as-built drawings. The Contractor shall provide the City with a letter of approval for contract closure from any surety furnishing bonds for the Work provided on AIA Form G707 (Consent of Surety Letter) or equivalent form.

- 8.2. Final Payment. Upon satisfactory completion of the Work, the City Representative will provide the Contractor with a written acceptance of the Work (the "Final Acceptance"). Payment shall not be made until the City Representative has approved the payment and a notice of contractor's settlement has been published in accordance with C.R.S. §38-26-107. The City shall condition publication and final settlement upon receipt of any duly executed approvals of the corporate surety or sureties issuing the bonds required hereunder. Such final settlement shall be advertised as provided by statute at least twice, the last publication appearing at least ten (10) days prior to the date of final settlement. On the date of final settlement (or such later date as may be permitted by statute if claims are asserted or litigation is commenced alleging nonpayment of funds due for labor, materials, supplies, etc.), payment and final settlement shall be made in full.
9. CONTRACTOR'S REPRESENTATIONS. In order to induce the City to enter into this Agreement, the Contractor makes the following representations:
- 9.1. The Contractor has familiarized itself with the nature and extent of the Agreement, Work, the locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. The Contractor acknowledges an obligation to comply with all applicable laws, including the Broomfield Municipal Code, to respect property rights by working within the defined work limits or designated staging areas, and to work within the prescribed work hours. The Contractor acknowledges that use of air compression brakes ("jake brakes") within City limits is prohibited, unless otherwise posted by the City Traffic Engineer.
- 9.2. Before submitting a Bid, the Contractor has become fully informed regarding the Work and any materials or equipment required, including the amount or quantity thereof. No adjustment or modification shall be allowed for any misunderstanding of the Work or of equipment or material requirements, or of the provisions contained in this Contract and in the other Contract Documents.
- 9.3. Contractor has given the City written notice of any conflicts, errors or discrepancies that he has discovered in the Agreement and exhibits incorporated therein and the written resolution thereof by the City is acceptable to the Contractor.

10. **NOTICE AND AUTHORIZED REPRESENTATIVES.** Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Contractor. The Contractor shall not replace the Contractor Representative unless: (a) the City requests a replacement, or (b) the Contractor terminates the employment of the Contractor Representative and provides a satisfactory substitute. The City must approve a substitute Contractor Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

5.1 The City designates **Kelly Behling** as the authorized representative of the City under this Agreement. Email address is [kbehling@broomfield.org](mailto:kbehling@broomfield.org).

5.2 The Contractor designates **Lori Kaiser** as the authorized representative of the Contractor under this Agreement. Email address is [lori@noraaconcrete.com](mailto:lori@noraaconcrete.com).

If the Contractor is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to [citycountylawyer@broomfield.org](mailto:citycountylawyer@broomfield.org).

Failure of City's on-site representative to call to the attention of the Contractor any defective work or deviations from the Contract Documents shall not constitute acceptance of such work by the City or relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract Documents.

11. **TIME EXTENSIONS AND COMPENSATION FOR DELAY.**

11.1. **Remedy.** If the Contractor is delayed or disrupted in the performance of the Work, the Contractor's exclusive remedy with respect to such delay or disruption shall be as stated in this Section.

11.2. **Time Extensions.** Evaluation of all time extension requests shall be based upon the latest updated project schedule submitted to the City by the Contractor.

11.3. **Definitions.** The following words shall have the meaning set forth below:

11.3.1. "Contractor Delay" is defined as delay on a particular date resulting from acts or omissions within the control of the Contractor or its subcontractors, agents or suppliers, including any delay within their joint control.

11.3.2. "No-Fault Delay" is defined as delay on a particular date resulting from events beyond the reasonable control of and without the fault or

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negligence of either the Contractor or the City or their agents, employees, contractors, subcontractors, sub-subcontractors or suppliers.

- 11.3.3. “Owner Delay” is defined as delay on a particular date resulting from acts or omissions within the control of the City, its agents, employees or contractors, including the City’s Representative.
- 11.3.4. “Concurrent Delay” is defined as the occurrence on a particular date of one or more instances of Owner Delay and Contractor Delay, Owner Delay and No-Fault Delay or Contractor Delay and No-Fault Delay.
- 11.4. Completion Date Adjustment. An adjustment in the Completion Date for delay on a particular date shall be made under this subparagraph if any delay on such date is classified as either Owner, No-Fault or Concurrent Delay. The adjustment in the Completion Date shall only be in proportion to the amount of the delay, which is attributable to Owner, or No-Fault Delay. No adjustment in the Completion Date shall be allowed for the portion of the delay that is attributable to Contractor Delay, including but not limited to, that portion of a Concurrent Delay which includes Contractor Delay.
- 11.5. Price Adjustment. An adjustment in the Contract Price for delay on a particular date shall be made under this subparagraph only if such delay is classified as either Owner Delay or Concurrent Delay when such Concurrent Delay includes Owner Delay. The adjustment in the Contract Price shall only be in proportion to the portion of the delay costs, which is directly attributable to Owner Delay. No adjustment in the Contract Price shall be made for the portion of the delay costs, which is attributable to Contractor Delay, or No-Fault Delay, or that portion of a Concurrent Delay which includes Contractor Delay or No-Fault Delay or both.
- 11.6. Mitigation. An adjustment in Contract Price shall be made under this subparagraph only to the extent to which the Contractor can demonstrate that its time-related costs to complete the Work will be increased. The Contractor expressly acknowledges its obligation to minimize the cost impact of compensable delays. The Contractor shall, to the best of its ability, re-assign labor and equipment, commence unaffected portions of the Work, and otherwise minimize delay costs. In no event shall the City be liable for payment of delay costs, which could have been avoided or mitigated by any means reasonably available to the Contractor or for consequential damages.
- 11.7. Notification of Delay and Recovery. The Contractor shall notify the City as soon as practicable regarding the nature and starting date of a delay, and the activities affected, but in no case later than seven (7) calendar days after the event giving rise to the delay. In the case of a continuing delay, only one

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notification shall be necessary. Any claim for an extension of time for delay shall be made in writing to the City not more than ten (10) calendar days after the end of the delay; otherwise, such claim shall be waived. Recovery of delay costs shall be waived unless a request for a change order for delay costs is submitted within ten (10) calendar days after the end of the delay period. The Contractor must also provide a cost and time impact analysis with any request for a change order for delay costs. The cost impact analysis shall contain all direct and indirect labor costs, all material and equipment expenses, any and all documented impact costs related to, and/or occasioned by the Work described therein, as well as all taxes (if applicable under the provisions of this Contract), insurance and profit. Documentation supporting this cost impact analysis must be submitted at the time of the request for change order for delay costs.

12. DEFAULT AND DAMAGES. If the Contractor fails to comply with any provision of this Agreement, the Contractor shall be liable for any and all damages, including without limitation, the cost of procuring similar supplies and services and all other costs and expenses incurred by the City because of such failure. If the Contractor fails or refuses to perform the Work on schedule, or to complete the Work in a timely and satisfactory manner, the City may terminate this Contract and the Contractor's right to proceed hereunder. If the City terminates this Contract under this paragraph, the Contractor may, at the option of the City, be required to cease any or all Work provided for under this Contract and shall be liable for any additional cost to the City for services acceptable to the City from another contractor as well as any actual damages associated with such failure to perform. The cost to complete the Work or any portion thereof which remains unperformed at the time of such termination, together with any other damages, shall be deducted from any sum payable hereunder before final payment to the Contractor.
13. LIQUIDATED DAMAGES. Time is of the essence in completing the Work. Alternatively, and in lieu of actual damages for delay, in the event of delay in the completion of the Work as specified beyond the Completion Date, it would be difficult to determine the exact amount of the loss or damages suffered by the City due to delays in completion of the Work. However, the City has attempted to forecast a reasonable daily amount as compensation for the damages incurred due to late completion caused by the Contractor, based upon considerations which include, but are not limited to, public inconvenience and additional contract administration costs. Therefore, the Contractor will be liable to the City, as liquidated damages (and not as a penalty), in the amount of \$2,500 for each and every calendar day beyond the Completion Date. The City reserves the right to deduct said liquidated damages from any amount due the Contractor under this Agreement or, at its option, to collect such liquidated damages directly from the Contractor or its surety.
14. PERFORMANCE AND PAYMENT BONDS. In accordance with C.R.S. §38-26-105, if the Contract Price exceeds \$50,000, the Contractor shall furnish at its expense a separate

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performance bond and labor and materials bond, each for an amount not less than one hundred percent (100%) of the Contract Price **within 10 calendar days of execution of this Agreement**. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the City. The bonds shall remain in effect through Final Acceptance, and continuing in effect through completion of all warranty and guaranty work and shall be delivered to the City prior to the commencement of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.

15. **COLORADO LABOR.** If the Contract Price exceed \$500,000, the Contractor shall employ not less than eighty percent of Colorado labor of each type or class of labor in the several classifications of skilled and common labor to perform the work under this Agreement in accordance with the provisions of C.R.S. §8-17-101 et seq.
16. **INDEPENDENT CONTRACTOR.** The Contractor is an independent contractor as provided in C.R.S. § 8-40-202(2). The Contractor is not entitled to workers' compensation benefits and the Contractor is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.
17. **INDEMNIFICATION.** The Contractor expressly agrees to indemnify, defend and hold harmless the City and the Colorado Department of Transportation, its officers, employees and insurers from and against all claims, damages, losses, expenses and demands, including court costs, attorney's fees and expenses, due to injuries, losses or damages arising out of, resulting from, or in any manner connected with the Contractor, its officers, employees, subcontractors or agents in connection with the performance of the services pursuant to this Agreement. Except for workers' compensation, disability benefits or other similar employee benefit claims, Contractor is not obligated to indemnify the City hereunder for that portion of any claims, damages, losses, demands, and expenses arising out of or resulting from any negligent act or omission of the City, or its agents and employees. This indemnification is intended to comply with and be subject to C.R.S. 13-50.5-102 (8), as amended from time to time. In the event that any such suit or action is brought against the City, the City will give timely notice thereof to the other Party.
18. **INSURANCE.** To assure the City that the Contractor is always capable of fulfilling specified indemnification obligations, the Contractor shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit B. Current proof of such insurance is attached at Exhibit B, incorporated by this reference and should list both the City and the Colorado Department of Transportation as additional insureds. However, proof of insurance attached as Exhibit B shall not be deemed to

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limit or define obligations of Contractor as provided elsewhere in this Agreement, and Contractor should rely on its expertise to obtain additional insurance coverage needed for the City and Contractor in its performance hereunder.

19. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Contractor shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall provide the appropriate insurance as required for the Contractor under this Agreement. The Contractor shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Contractor without the express written consent of the City.
20. NO THIRD PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
21. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the City's credit or faith, directly or indirectly, to the Contractor. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Contractor. The City's fiscal year is currently the calendar year.
22. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
23. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Contractor invoice, Contractor timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Contractor's rights and obligations shall be solely governed by the terms and conditions of this Agreement.
24. SEVERABILITY. If any provision of this agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such

provision in any other circumstances, or the validity or enforceability of the Agreement as a whole.

25. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.
26. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.
27. DOCUMENTS. All drawings, analyses, plans, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall remain the sole and exclusive property of the City, and the other Party shall not provide copies of any such material to anyone without the express written consent of the City.
28. RECORDS RETENTION. The Contractor shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Contractor for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.
29. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement.
30. SALES TAX EXEMPTION. The Contractor and its subcontractors, consultants and suppliers will not be required to pay Colorado state sales and use taxes on property incorporated into the Work. The Contractor shall obtain a sales tax exemption permit from the State of Colorado Department of Revenue, if necessary, to obtain materials for the Work without the payment of Colorado state sales tax.
31. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
32. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.
33. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of

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business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

34. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.
35. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
36. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.
37. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Any claims or litigation arising under this Agreement will be brought by the Parties solely in the District Court, Broomfield County, Colorado.
38. LAWS TO BE OBSERVED. The Contractor shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City and the Colorado Department of Transportation against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees. The Contractor shall procure all necessary approvals, licenses and permits at its own expense; provided, that, the Contractor will be able to receive no cost permits when such permits are issued by the City directly.
39. TERMINATION. The City reserves the right to terminate this Contract, in whole or in part, with or without cause by written notice to the Contractor. In the event of termination, the Contractor shall incur no additional expenses and shall perform no further Work for the City under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the City. The City shall pay the Contractor for all work satisfactorily performed prior to receipt of the notice of



termination and for other services required by the City to be completed prior to termination and satisfactorily performed.

40. SURVIVAL OF OBLIGATIONS. The obligations contained in this Agreement that are not fully performed as of termination shall survive termination and shall continue to bind the Parties until fully performed.
41. EXECUTION; ELECTRONIC SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

*[The remainder of this page is intentionally left blank.]*

This Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 2024.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

\_\_\_\_\_  
City and County Manager  
One DesCombes Drive  
Broomfield, CO 80020

APPROVED AS TO FORM:

\_\_\_\_\_  
City and County Attorney's Office

CONTRACTOR:

Noraa Concrete Construction Corporation


By:   
Name: Lori Kain, Vice President  
Address: 997 Platte River Blvd Unit A  
Brighton, CO 80601



EXHIBIT A  
CONTRACTOR'S BID

**City and County of Broomfield  
Department of Community Development**

**US287/120th Sidpath Infill Project  
Project No.: C M145-015 (24351)**

**BID PROPOSAL FORM (REVISION 3)**

ITEM NO.	ITEM	UNIT	QUANTIT Y	UNIT COST	COST
201-00000	CLEARING AND GRUBBING	LS	1	\$ 18,200.00	\$ 18,200.00
202-00000	REMOVAL OF STRUCTURES AND OBSTRUCTIONS	LS	1	\$ 4,808.00	\$ 4,808.00
202-00009	TREE TRIMMING	LS	1	\$ 2,990.00	\$ 2,990.00
202-00019	REMOVAL OF INLET	EACH	3	\$ 3,169.00	\$ 9,507.00
202-00035	REMOVAL OF PIPE	LF	7	\$ 419.00	\$ 2,933.00
202-00090	REMOVAL OF DELINEATOR	EACH	17	\$ 116.00	\$ 1,972.00
202-00190	REMOVAL OF MEDIAN COVER MATERIAL	SY	46	\$ 19.00	\$ 874.00
202-00200	REMOVAL OF SIDEWALK	SY	780	\$ 21.00	\$ 16,380.00
202-00203	REMOVAL OF CURB AND GUTTER	LF	1,781	\$ 10.50	\$ 18,700.50
202-00206	REMOVAL OF CONCRETE CURB RAMP	SY	102	\$ 29.00	\$ 2,958.00
202-00210	REMOVAL OF CONCRETE PAVEMENT	SY	1,041	\$ 32.00	\$ 33,312.00
202-00220	REMOVAL OF ASPHALT MAT	SY	1,101	\$ 16.00	\$ 17,616.00
202-00250	REMOVAL OF PAVEMENT MARKING	SF	1,800	\$ 4.00	\$ 7,200.00
202-00300	REMOVAL OF FIRE HYDRANT	EACH	3	\$ 3,012.00	\$ 9,036.00
202-00700	REMOVAL OF LIGHT STANDARD	EACH	1	\$ 1,046.00	\$ 1,046.00
202-00810	REMOVAL OF GROUND SIGN	EACH	13	\$ 232.00	\$ 3,016.00
202-00821	REMOVAL OF SIGN PANEL	EACH	1	\$ 232.00	\$ 232.00
202-00831	REMOVAL OF TRAFFIC SIGNAL HEAD	EACH	4	\$ 350.00	\$ 1,400.00
202-00860	REMOVAL OF PEDESTRIAN PUSH BUTTON	EACH	4	\$ 802.00	\$ 3,208.00
202-04001	PLUG CULVERT	EACH	2	\$ 3,322.00	\$ 6,644.00
202-04005	CLEAN VALVE BOX	EACH	4	\$ 344.00	\$ 1,376.00
203-00010	UNCLASSIFIED EXCAVATION (COMPLETE IN PLACE)	CY	487	\$ 63.00	\$ 30,681.00
203-01594	COMBINATION LOADER	HR	20	\$ 142.00	\$ 2,840.00
203-01597	POTHOLING	HR	48	\$ 352.00	\$ 16,896.00
207-00700	TOPSOIL (ONSITE)	CY	404	\$ 12.00	\$ 4,848.00

208-00012	EROSION LOG TYPE 1 (9 INCH)	LF	354	\$ 4.50	\$ 1,593.00
208-00035	AGGREGATE BAG	LF	15	\$ 12.00	\$ 180.00
208-00046	PRE-FABRICATED CONCRETE WASHOUT STRUCTURE	EACH	6	\$ 1,252.00	\$ 7,512.00
208-00051	STORM DRAIN INLET PROTECTION (TYPE 1)	LF	60	\$ 13.00	\$ 780.00
208-00075	PRE-FABRICATED VEHICLE TRACKING PAD	EACH	3	\$ 3,525.00	\$ 10,575.00
208-00103	REMOVAL AND DISPOSAL OF SEDIMENT (LABOR)	HOURL	24	\$ 55.00	\$ 1,320.00
208-00105	REMOVAL AND DISPOSAL OF SEDIMENT (EQUIPMENT)	HOURL	24	\$ 174.00	\$ 4,176.00
208-00106	SWEEPING (SEDIMENT REMOVAL)	HOURL	24	\$ 209.00	\$ 5,016.00
208-00207	EROSION CONTROL MANAGEMENT (ECM)	DAY	48	\$ 1,674.00	\$ 80,352.00
210-00010	RESET MAILBOX STRUCTURE (TYPE 1)	EACH	3	\$ 372.00	\$ 1,116.00
210-00427	RESET HANDRAIL	LF	15	\$ 294.00	\$ 4,410.00
210-00810	RESET GROUND SIGN	EACH	5	\$ 213.00	\$ 1,065.00
210-00815	RESET SIGN PANEL	EACH	14	\$ 74.00	\$ 1,036.00
210-00827	RESET PULL BOX	EACH	8	\$ 1,886.00	\$ 15,088.00
210-04010	ADJUST MANHOLE	EACH	3	\$ 853.00	\$ 2,559.00
210-04020	MODIFY INLET	EACH	4	\$ 5,549.00	\$ 22,196.00
210-04025	MODIFY STRUCTURE	EACH	3	\$ 9,954.00	\$ 29,862.00
210-04050	ADJUST VALVE BOX	EACH	4	\$ 355.00	\$ 1,420.00
212-00006	SEEDING (NATIVE)	ACRE	0.5	\$ 8,087.00	\$ 4,043.50
212-01200	LANDSCAPE RESTORATION	LS	1	\$ 6,200.00	\$ 6,200.00
213-00004	MULCHING (WEED FREE STRAW)	ACRE	0.5	\$ 3,369.00	\$ 1,684.50
213-00061	MULCH TACKIFIER	LB	250	\$ 4.00	\$ 1,000.00
217-00020	HERBICIDE TREATMENT	HR	10	\$ 337.00	\$ 3,370.00
240-00000	WILDLIFE BIOLOGIST	HR	40	\$ 175.00	\$ 7,000.00
240-00010	REMOVAL OF NEST	HR	40	\$ 162.00	\$ 6,480.00
304-06007	AGGREGATE BASE COURSE (CLASS 6)	CY	635	\$ 52.00	\$ 33,020.00
403-00720	HOT MIX ASPHALT (PATCHING)(ASPHALT)	TON	15	\$ 411.00	\$ 6,165.00
403-33841	HOT MIX ASPHALT (GRADING S)(100)(PG 64-22)	TON	197	\$ 209.00	\$ 41,173.00
403-34871	HOT MIX ASPHALT (GRADING SX)(100)(PG 76-28)	TON	66	\$ 310.00	\$ 20,460.00
412-00600	CONCRETE PAVEMENT (6 INCH)	SY	141	\$ 120.00	\$ 16,920.00
603-01185	18" REINFORCED CONCRETE PIPE (CIP)	LF	52	\$ 402.00	\$ 20,904.00
603-01245	24" REINFORCED CONCRETE PIPE (CIP)	LF	92	\$ 447.00	\$ 41,124.00

604-00000	CHASE DRAIN	EACH	1	\$ 2,813.00	\$ 2,813.00
604-00305	INLET TYPE C (5 FOOT)	EACH	1	\$ 10,080.00	\$ 10,080.00
604-00310	INLET TYPE C (10 FOOT)	EACH	1	\$ 12,893.00	\$ 12,893.00
604-19105	INLET TYPE R L5 (5 FOOT)	EACH	6	\$ 11,812.00	\$ 70,872.00
604-19310	INLET TYPE R L15 (10 FOOT)	EACH	1	\$ 22,593.00	\$ 22,593.00
604-31005	MANHOLE BOX BASE (5 FOOT)	EACH	3	\$ 16,871.00	\$ 50,613.00
607-11525	FENCE (PLASTIC)	LF	1,000	\$ 5.50	\$ 5,500.00
608-00005	CONCRETE SIDEWALK (SPECIAL)	SY	40	\$ 136.00	\$ 5,440.00
608-00006	CONCRETE SIDEWALK (6 INCH)	SY	3,048	\$ 84.00	\$ 256,032.00
608-00010	CONCRETE CURB RAMP	SY	169	\$ 200.00	\$ 33,800.00
609-21020	CURB AND GUTTER TYPE 2 (SECTION II-B)	LF	1,854	\$ 61.00	\$ 113,094.00
609-24004	GUTTER TYPE 2 (4 FOOT)	LF	30	\$ 60.00	\$ 1,800.00
610-00026	MEDIAN COVER MATERIAL (6 INCH PATTERNED CONCRETE)	SF	1,460	\$ 22.00	\$ 32,120.00
612-00042	DELINEATOR (FLEXIBLE)(TYPE II)	EACH	6	\$ 202.00	\$ 1,212.00
612-00043	DELINEATOR (FLEXIBLE)(TYPE III)	EACH	15	\$ 202.00	\$ 3,030.00
614-00011	SIGN PANEL (CLASS 1)	SF	166	\$ 56.00	\$ 9,296.00
614-00214	STEEL SIGNPOST (1.75X1.75 INCH TUBING)	LF	97	\$ 27.00	\$ 2,619.00
614-00216	STEEL SIGNPOST (2X2 INCH TUBING)	LF	172	\$ 29.00	\$ 4,988.00
614-00218	STEEL SIGNPOST (2.25X2.25 INCH TUBING)	LF	36	\$ 36.00	\$ 1,296.00
614-72863	PEDESTRIAN PUSH BUTTON ASSEMBLY	EACH	10	\$ 5,601.00	\$ 56,010.00
619-78048	6" FIRE HYDRANT	EACH	3	\$ 17,900.00	\$ 53,700.00
620-00020	SANITARY FACILITY	EACH	1	\$ 1,529.00	\$ 1,529.00
625-00000	CONSTRUCTION SURVEYING	LS	1	\$ 31,377.00	\$ 31,377.00
626-00000	MOBILAZTION	LS	1	\$ 155,344.00	\$ 155,344.00
627-00008	MODIFIED EPOXY PAVEMENT MARKING	GAL	12	\$ 438.00	\$ 5,256.00
627-00090	PAVEMENT MARKING (SPECIAL)	SF	70	\$ 27.00	\$ 1,890.00
627-01010	PREFORMED PLASTIC PAVEMENT MARKING (TYPE 1)(INLAID)	SF	53	\$ 26.00	\$ 1,378.00
627-30405	PREFORMED THERMOPLASTIC PAVEMENT MARKING (WORD-SYMB)	SF	69	\$ 32.00	\$ 2,208.00
627-30410	PREFORMED THERMOPLASTIC PAVEMENT MARKING (XWALK-STOP)	SF	1,384	\$ 21.00	\$ 29,064.00
630-00000	FLAGGING	HR	300	\$ 51.00	\$ 15,300.00
630-00007	TRAFFIC CONTROL INSPECTION	DAY	43	\$ 377.00	\$ 16,211.00
630-00012	TRAFFIC CONTROL MANAGEMENT	DAY	107	\$ 1,213.00	\$ 129,791.00

630-80336	BARRICADE (TYPE 3 M-B)(TEMPORARY)	EACH	4	\$ 202.00	\$ 808.00
630-80341	CONSTRUCTION TRAFFIC SIGN (PANEL SIZE A)	EACH	40	\$ 67.00	\$ 2,680.00
630-80342	CONSTRUCTION TRAFFIC SIGN (PANEL SIZE B)	EACH	20	\$ 67.00	\$ 1,340.00
630-80355	PORTABLE MESSAGE SIGN PANEL	EACH	2	\$ 4,717.00	\$ 9,434.00
630-80357	ADVANCE WARNING FLASHING OR SEQUENDING ARROW PANEL (B)	EACH	2	\$ 4,717.00	\$ 9,434.00
630-80360	DRUM CHANNELIZING DEVICE	EACH	20	\$ 54.00	\$ 1,080.00
630-80380	TRAFFIC CONE	EACH	40	\$ 14.00	\$ 560.00
630-80392	STACKABLE TUBULAR MARKER	EACH	25	\$ 48.00	\$ 1,200.00
630-80393	STACKABLE VERTICAL PANEL	EACH	40	\$ 48.00	\$ 1,920.00
700-70010	MINOR CONTRACT REVISIONS	FA	1	\$ 115,000.00	\$ 115,000.00
700-70019	ASPHALT CEMENT COST ADJUSTMENT	FA	1	\$ 2,500.00	\$ 2,500.00
700-70380	EROSION CONTROL	FA	1	\$ 8,000.00	\$ 8,000.00
<b>BID TOTAL:</b>					<b>\$ 1,911,578.50</b>



EXHIBIT B  
INSURANCE REQUIREMENTS

A successful Bidder shall carry the insurance in the amounts and kinds and subject to the conditions set forth below. A successful Bidder shall submit proof of such insurance when he delivers the executed Agreement to the City and County of Broomfield.

	State - CDOT	City & County of Broomfield
<b>General Liability Insurance</b>	\$1,000,000 each occurrence/ \$1,000,000 aggregate	\$1,000,000 each occurrence/\$2,000,000 aggregate
<b>Fire</b>	\$50,000 any one fire	
<b>Automobile Insurance</b>	\$1,000,000 Combined single limit; any & all vehicles owned, used or hired	\$1,000,000 Combined single limit; any & all vehicles owned, used or hired
<b>Workers' Comp</b>	Statutory limits; Employer's liability \$500,000/\$500,000/ \$500,000	Statutory limits; Employer's liability \$500,000/\$500,000/ \$500,000
<b>Additional Insured Info</b>	CDOT Region 1	City and County of Broomfield
	ATTN: Maria Hajiaghadee	ATTN: Kelly Behling, CIP Project Manager
	2829 W. Howard Place	One DesCombes Drive
	Denver, CO 80204	Broomfield, CO 80020- 2495
	<a href="mailto:Maria.hajiaghadee@state.co.us">Maria.hajiaghadee@state.co.us</a>	
<b>Waiver of Subrogation</b>	yes	yes
<b>Separation of insureds</b>	yes	yes
<b>Policy shall be primary and non- contributing</b>	yes	yes
<b>Cancellation notification</b>	45 days prior to cancellation, non- renewal, etc.	30 days prior to cancellation, non-renewal, etc.
<b>A.M. Best Rating</b>		A- and Class VII or better
<b>Authorized to do business in CO</b>	yes	yes

## CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS for CCOB & CDOT Contracts

1. All insurers must be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers should have an A.M. Best Company rating of at least A-VII.
3. Additional Insured - City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage – Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield.
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver – All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits– The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/ Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates – Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
  - a. the effective date of the Contract
  - b. the expiration date of any coverage
  - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.
14. Contractors must carry all insurance or purchase the below insurance. No insurance will be waived for CDOT contracts.

Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the following:

Insurance Requirements for CCOB & CDOT Contracts		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	<b>Commercial General Liability</b> Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability.  Note: For contracts involving vendor/contractor contact with minors or at risk adults Sexual Abuse and Misconduct Coverage should be included in the coverage requirements.	Minimum Limits: <ul style="list-style-type: none"> <li>• \$1,000,000 Each Occurrence</li> <li>• \$2,000,000 General Aggregate (Per project aggregate for construction contracts)</li> <li>• \$2,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)</li> <li>• \$50,000 any 1 fire</li> </ul>
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"> <li>• Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	Minimum Limit: <ul style="list-style-type: none"> <li>• \$1,000,000 each accident combined single limit.</li> <li>• If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li> </ul>
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"> <li>• Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li> </ul> Note: This requirement shall not apply when a contractor or subcontractor is exempt under the Colorado Workers' Compensation Act AND when such contractor or subcontractor provides an appropriate sole proprietor letter.	Employer's Liability with Minimum Limits: <ul style="list-style-type: none"> <li>• \$100,000 Each Accident</li> <li>• \$100,000 Each Employee by Disease</li> <li>• \$500,000 Disease Aggregate</li> </ul>
4.	<b>Professional Liability</b> <ul style="list-style-type: none"> <li>• Contractor will purchase and maintain professional liability insurance covering any damages caused by an error, omission or negligent professional act to include the following coverages:               <ul style="list-style-type: none"> <li>• Limited Contractual Liability</li> <li>• If coverage is Claims Made, a retroactive date prior to the inception of the work</li> <li>• If coverage is Claims Made, similar coverage must be maintained for three years following the completion of the work or an extended reporting period of 36 months must be purchased</li> </ul> </li> </ul>	Minimum Limit: <ul style="list-style-type: none"> <li>• \$1,000,000 Per Claim /Aggregate</li> </ul>
5.	<b>Protected Information (Cyber) Liability</b> <ul style="list-style-type: none"> <li>• Contractor will purchase and maintain liability insurance covering all loss of confidential information, such as PII, PHI, PCI, Tax Information and CJI, and claims based on alleged violation of privacy rights through improper use or disclosure of protected information.</li> </ul>	Minimum Limit: <ul style="list-style-type: none"> <li>• \$1,000,000 per Claim</li> <li>• \$2,000,000 General Aggregate</li> </ul>
6.	<b>Crime Insurance</b> coverage including employee dishonesty coverage.	Minimum Limit: <ul style="list-style-type: none"> <li>• \$1,000,000 per Claim/Aggregate</li> </ul>
<b>Additional Insured - The following shall be named an Additional Insured:</b> The State of Colorado and The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Protected Information (Cyber) Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.  <b>Certificate Holder is:</b> City and County of Broomfield One DesCombes Drive Broomfield, CO 80020-2495 <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a>		

No deviations below the standards given above will be approved by the City and County of Broomfield's Risk Management office for CDOT contracts.



**Proposed Resolution Northmoor Park Playground Construction Agreement**

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Consent Items Item: 6E
Presented By	
Brian Graham, CIP Manager	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#) and visit [BroomfieldVoice.com](https://broomfieldvoice.com)

The memo is requesting approval of a construction agreement with Western States Reclamation LLC (Western States), for the Northmoor Park Playground Replacement. In May 2024, Broomfield issued a bid for the construction of the project, and Western States was the low bidder on the project.

**Attachments**

[Northmoor Park Playground Construction Agreement Memo.pdf](#)

[Resolution 2024-104.pdf](#)

[1-24-11025 Contract - Northmoor Park - Signed \(1\).pdf](#)

## Summary

[View Correspondence](#) and [Broomfield Voice Page](#)

Proposed Resolution No. 2024-104, would approve a construction agreement between the City and County of Broomfield and Western States Reclamation LLC for the construction of the Northmoor Park Playground Replacement Project.

The Northmoor Park Playground is directly adjacent to the Bal Swan Children's Center, an early childhood education non-profit organization that aims to provide an inclusive, nurturing, and stimulating environment for young children. Approximately one-third of students who attend the Bal Swan Children's Center have special needs, and therefore, accessibility and inclusivity of the play area at Northmoor Park is of paramount importance.

Broomfield Staff solicited feedback from the community through the Broomfield Voice to understand what elements people most desire to see at the playground. This information, in conjunction with a desire to maintain an inclusive space, was used to develop a design and select equipment for the playground.

In December 2023, Design Concepts CLA, Inc. was selected to design the project. The fee for design services which included landscape and engineering design and construction support was \$44,640.

An invitation to bid was posted to BidNet on May 30, 2024, and two contractors submitted bids by the bid opening on June 26, 2024.

The lowest responsive bidder was Western States Reclamation LLC for \$282,232 and is recommended by staff to complete the project.

If the agreement is approved on August 13, 2024, construction is planned to begin in September 2024. Work is expected to be substantially completed by February 2025.

Proposed Resolution No. 2024-104 would approve an agreement with Western States Reclamation LLC for the construction of the Northmoor Park Playground Replacement Project.

## Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
Park & Recreation (22-70080-55200) Sources of Funds - 0AZ0038	\$594,680
Design Services - Design Concepts CLA, Inc.	-\$44,640
Playground Equipment Procurement - Summit Recreation, Star Playgrounds and Bienenstock	-\$121,853

Sources and Uses of Funds	Amount
Construction - Western States Reclamation LLC	-\$282,232
10% Construction Contingency	-\$28,223
Geotechnical - Materials Testing	-\$500
Projected Balance	\$117,232

## Prior Council or Other Entity Actions

On October 25, 2022 Council approved Resolution No. [2022-114](#) to adopt the 2023 budget for the City and County of Broomfield which included funding for the Annual Playground Replacements.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to proceed with the project the appropriate motion is...

That Resolution 2024-104 be adopted.

## Alternatives

Do not proceed with the project.

# RESOLUTION NO. 2024-104

A resolution approving the Construction Agreement by and between the City and County of Broomfield and Western States Reclamation LLC for the Northmoor Park Playground Replacement Project

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

**Section 1.**

The Construction Agreement by and between the City and County of Broomfield and Western States Reclamation LLC, for the Northmoor Park Playground Replacement Project in the amount not to exceed \$282,232 is hereby approved.

**Section 2.**

The Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest the agreement, in form approved by the City and County Attorney.

**Section 3.**

The City and County Manager or a designee thereof is authorized to approve change orders in an aggregate amount not to exceed ten percent.

**Section 4.**

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024.

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Office of the City and County Clerk

Approved as to form:

*NCR*

\_\_\_\_\_  
City and County Attorney

**A CONSTRUCTION AGREEMENT BY AND BETWEEN  
THE CITY AND COUNTY OF BROOMFIELD AND  
WESTERN STATES RECLAMATION LLC FOR THE  
NORTHMOOR PARK PLAYGROUND PROJECT**

1. **PARTIES.** The parties to this Construction Agreement (this “Agreement”) are the City and County of Broomfield, a Colorado municipal corporation and county, (the “City”) and **Western States Reclamation LLC** (the “Contractor”), collectively, the “Parties,” or individually, a “Party.”
2. **RECITALS.** The Recitals to this Agreement are incorporated herein by this reference as though fully set forth within the body of this Agreement.
  - 2.1. The City, seeking construction services for the Northmoor Park Playground Project completed a competitive selection process by invitation to bid (ITB) issued on **May 30, 2024**.
  - 2.2. The Contractor’s response to the above referenced ITB was determined to be of best value, responsible, responsive bidder to the City for the procurement of the services requested.
  - 2.3. The Parties therefore desire to enter into this Agreement for completion of the services further described herein.
3. **TERMS AND CONDITIONS.** In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:
  - 3.1. **Work.** The Contractor agrees to furnish all necessary labor, materials, equipment, tools, and services necessary to perform in a workmanlike manner the work (hereinafter “Work”) described in the Construction Plans and Technical Specifications incorporated by this reference.
  - 3.2. **Contract Documents.** The Contract Documents shall consist of the following:
    - 3.2.1. This Agreement; and
    - 3.2.2. The Contractor’s Bid Form, attached hereto as **Exhibit A**; and
    - 3.2.3. The ITB; and
    - 3.2.4. The Construction Plans for CIP Project No. 0AZ0038; and
    - 3.2.5. The Technical Specifications for CIP Project No. 0AZ0038; and
    - 3.2.6. The General Conditions; and
    - 3.2.7. Any change orders and contract amendments, as applicable; and
    - 3.2.8. The Insurance Requirements attached hereto as **Exhibit B**,



all of which are incorporated by reference as though set forth in full herein, whether or not attached hereto and shall form an integral part of this Contract. If there is any conflict between this Agreement and the other Contract Documents, this Agreement shall control.

- 3.3. Access and Inspection. The City and its representatives shall at all times have access to the Work. The Contractor shall provide proper facilities for access to and for inspection of the Work for the purpose of determining compliance with this Agreement and quality of workmanship and material. All materials, equipment and supplies used in the performance of the Work shall be subject to adequate inspection and testing in accordance with generally accepted standards. The City Representative may order that portions of the Work be uncovered, exposed or made available for observation, inspection or testing at no additional cost. The Contractor shall provide all labor, tools, materials, equipment and supplies necessary to comply with the request of the City Representative. If any portion of the Work is determined to be defective, the Contractor shall bear all costs involved to bring the Work into compliance with the Agreement, including without limitation the cost to replace any materials, to re-perform or to reconstruct. The Contractor shall remove from the work site all work or materials rejected by the City for failure to comply with the Contract whether incorporated in the Work or not at no additional cost to the City.
- 3.4. Site Clean-Up. On a daily basis, the Contractor shall maintain the work site free from accumulation of waste materials or rubbish caused by performance of the Work. The Contractor shall remove all rubbish, tools, construction equipment, machinery, and surplus material from the work site. If the Contractor fails to maintain the work site in an appropriate condition, the City may, after notice to the Contractor, perform any necessary clean-up and charge the clean-up costs to the Contractor.
- 3.5. Protection of Property. All existing finishes, structures, utilities, services, roads, trees, shrubbery, etc. located on City property and adjacent property impacted by the Work shall be protected against damage or interrupted services at all times by the Contractor during the term of the Work. The Contractor shall be responsible for repairing or replacing any and all property which is damaged by reason of the Contractor's operation on the property to the satisfaction of the City within three (3) weeks of the notification of such damage, which may be extended with written approval of the City.
- 3.6. Utilities. The Contractor shall fully comply with the provisions of Article 1.5 of Title 9 of the Colorado Revised Statutes including, but not limited to, providing notices to the notification association. Unless otherwise provided in the Scope of Work, the Contractor shall be responsible for communicating and coordinating with utilities, as necessary. The Contractor shall cooperate with

utilities and the City as provided in this Agreement and as required by law. The Contractor shall be responsible for determining the exact location of utilities that may interfere with construction of the Work by exploratory excavation sufficiently in advance of beginning construction in an area so that potential conflicts may be resolved. The Contractor will consider in the Contract Price all of the utility appurtenances within the project; and the Contractor shall not make a claim for delay or additional compensation due to any relocation operations by a utility.

- 3.7. Documents on Site. The Contractor shall maintain at the site for the City one electronic or hard copy of all drawings, specifications, addenda, change orders and other modifications, in good order and marked currently to record all changes made during construction. At the City's option, the referenced record drawings will be reviewed monthly by the City for acceptability. If, in the judgment of the City, the Contractor fails or refuses to keep these documents current, the Contractor shall not be entitled to progress payments until it makes the necessary changes to the documents to make them current.
- 3.8. Differing Site Conditions. The Contractor acknowledges that it has satisfied itself as to the character, quality, and quantity of surface and subsurface materials or obstacles to be encountered insofar as this information is reasonably ascertainable from an inspection of the site and review of the Contract Documents.
  - 3.8.1. Contractor shall give immediate written notice to the City Representative if it encounters a "Differing Site Condition," defined as either:
    - 3.8.1.1. Subsurface or latent physical conditions at the site which differ materially from those indicated in the Contract Documents; or
    - 3.8.1.2. Unknown physical conditions at the site, of an unusual nature, which differ materially from those ordinarily encountered and generally recognized as inhering in work of the character provided for in this Contract.
  - 3.8.2. Contractor acknowledges that no request for a change order or modification in Contract Price resulting from a Differing Site Condition shall be allowed unless immediate written notice is provided and the conditions remain undisturbed until the City has the opportunity to investigate.
4. Completion Date. The Contractor shall begin the Work on or before the fifth (5th) calendar day after receipt of the Notice to Proceed. The Notice to Proceed will stipulate the date on which the contract time count commences (the "Start Date").

The Contractor shall complete the Work and fulfill all of its other obligations within **one hundred twenty (120)** calendar days of the Start Date (the “Completion Date”). The time between the Start Date and the Completion Date shall be known as the “Contract Time.”

All time limits are of the essence in this Agreement. The Contractor acknowledges that a notice to proceed will not be issued until the City has received acceptable certificates of insurance and bonds, if applicable.

5. CONTRACTOR’S PROJECT SCHEDULE. The Contractor shall submit a completion schedule for the Work (the “Project Schedule”) beginning with receipt of the signed Agreement and concluding with Project Completion prior to the commencement of the Work and shall coordinate on a daily basis with the City’s project manager. The Project Schedule shall include all lead time for the order and delivery of equipment for the Work. Schedule updating shall be done on a **weekly basis**, or more often as necessary (each a “Schedule Update”). The revision shall indicate actual progress to date, changes resulting from change orders, and planned changes as necessary to complete the Work in accordance with the Contract Documents. All costs associated with the development and maintenance of the Project Schedule shall be borne by the Contractor. Acceptance by the City of the Contractor’s Project Schedule does not relieve the Contractor of any of its responsibility whatsoever for the accuracy or feasibility of the Project Schedule, or of the Contractor’s ability to meet the Contract Time, nor does such acceptance expressly or impliedly warrant, acknowledge or admit the reasonableness of the activities, duration, or cost loading of the Contractor’s Project Schedule.
6. UNUSUALLY SEVERE WEATHER CONDITIONS.
  - 6.1. It is expressly understood and agreed, by and between the Contractor and the City, that the Contract Time for the completion of the Work is a reasonable time, taking into consideration the climatic and economic conditions and other factors prevailing in the locality of the Work. The Contract Time anticipates “Normal” weather and climate conditions in and around the vicinity of the project site during the times of year that the construction will be carried out. Extensions of time based upon weather conditions shall be granted only if the Contractor demonstrates clearly that such conditions were “unusually severe,” would not have been reasonably anticipated, and that such conditions adversely affected the Contractor’s Work and thus required additional time to complete the Work.
  - 6.2. The following specifies the procedure for the determination of time extensions for unusually severe weather. The listing below defines the anticipated number of calendar days lost to adverse weather for each month and is based upon National Oceanic and Atmospheric Administration (NOAA) or similar data for

the geographic location of the project.

ANTICIPATED CALENDAR DAYS LOST TO ADVERSE WEATHER CONDITIONS:												
JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL
7	5	4	3	3	2	2	2	2	3	3	7	43 day

- 6.3. The above schedule of anticipated adverse weather will constitute the base line for monthly (or portion thereof) weather time evaluations. Upon acknowledgement of the notice to proceed and continuing throughout the Agreement on a monthly basis, actual adverse weather days and the impact of adverse weather days that delay the Work will be recorded on a day-to-day basis. It is assumed that the Work will be carried out Mondays through Fridays (holidays excepted); however, non-standard work hours will be required as specified in the Statement of Work and as shown on the Project Schedule. The number of calendar days of delayed Work due to adverse weather or the impact thereof will then be compared to the monthly adverse weather schedule above.
- 6.4. An actual adverse weather day must prevent Work for 50 percent or more of the Contractor's workday, delay Work critical to the timely completion of the Project, and be documented by the Contractor. The Contractor shall notify the City Representative in writing if work cannot proceed on a given date, within two calendar days of that date. The City will use the above written notification in determining the number of calendar days for which Work was delayed during each month.
- 6.5. At the end of each month if the number of calendar days for which Work was delayed due to adverse weather exceeds that shown in the above schedule a change order will be executed which increases the Contract Time.
- 6.6. The Contractor's Project Schedule must reflect the above-anticipated adverse weather delays on all weather-dependent activities. While extension of time shall be granted for "unusually severe" weather or climate conditions, or the impact thereof, the City shall make no monetary compensation for any costs to the Contractor arising out of such delays. The Contractor shall comply with the portions of the Contract Documents relating to its Project Schedule and amendments thereto which result from the "unusually severe" weather condition.

7. PRICE AND PAYMENT. The City shall pay the Contractor for performance of the Work an amount not to exceed **\$282,232** (the “Contract Price”) based upon the unit prices set forth on Contractor’s Cost Proposal attached hereto as Exhibit A and in accordance with the following schedule:
- 7.1. If the Contractor is satisfactorily performing the Agreement, the City shall make partial payments at the end of each calendar month or as soon thereafter as practicable of ninety-five percent (95%) of the Contract Price based on the calculated value of the Work completed (the “Partial Payments”) and shall retain five percent (5%) of the amount due to the Contractor (the “Retained Amount”) until the Work is complete. If applicable, the Contractor shall make payments to its subcontractors in accordance with C.R.S. §24-91-103.
- 7.2. The City shall retain the Retained Amount until Final Acceptance (as defined in Final Acceptance and Final Payment below). If the Contractor has completed the Work in a manner finally acceptable to the City, the City may authorize final payment from the Retained Amount upon written request by invoice of the Contractor (the “Final Payment”). Before the Final Payment is made, the City and the Contractor, as applicable, shall comply with the Final Acceptance and Payment paragraph of this Agreement.
- 7.3. The Contractor shall, as soon as practicable after the end of each calendar month during performance of the Work, submit an itemized invoice for services performed, stating the percentage of the Work that has been completed and the type of services performed. Each invoice will also include an Application and Certificate of Payment form (AIA Document G702) or equivalent form approved by the City. The Contractor shall prepare the invoices at its sole cost and shall include sufficient detail to enable the City to verify the appropriateness of the invoice. Each invoice shall be subject to review and approval by the City Representative. The City shall not be required to pay disputed items until the dispute is resolved. Payment of any invoice shall not act as a waiver of the City’s right to recover in full any over-payment revealed by any subsequent audit or inspection. No air travel, car rental, entertainment, education expense, meals or similar or related costs shall be payable without prior written approval of the City. Incorrect payments to the Contractor due to omission, error, fraud, or defalcation may be recovered from the Contractor by deduction from subsequent payments due the Contractor under this Contract or other contracts between City and Contractor.
- 7.4. Change Orders. The Contractor will do nothing to cause the Contract Price to increase without prior execution of a change order by the City. The City will issue no change order requiring additional compensable work to be performed, which work causes the aggregate amount payable under this Agreement to

exceed the amount appropriated for this Agreement. Except as provided below and as provided in C.R.S. 24-91-103.6, the City shall have no duty or obligation whatsoever to compensate or to reimburse the Contractor for any additional work not specifically authorized as provided herein. In the event (i) the City requires additional compensable work to be performed by the Contractor prior to the execution or other finalization of a change order or contract amendment, and (ii) the Contractor has submitted to the City an estimate of the cost for the additional compensable work, then the City shall reimburse the Contractor for the costs associated with such additional work on a periodic basis in accordance with the terms of this Agreement.

8. FINAL INSPECTION AND FINAL PAYMENT.

8.1. Final Inspection. The Contractor shall notify the City when the Work is complete and ready for final inspection by means of a letter of completion (the "Letter of Completion"). Within ten (10) calendar days of the City's receipt of the Letter of Completion, the City Representative shall make a final inspection to determine whether the Work has been completed in accordance with this Agreement and shall submit a written list of any defects to the Contractor (the "Punchlist"). The Contractor shall promptly correct all Punchlist items without additional cost to the City within ten (10) calendar days after receipt of the Punchlist. If any Punchlist item cannot be corrected within ten (10) calendar days, the Contractor shall submit a letter to the City Representative for approval requesting an extension of time to complete such item (the "Request for Extension"). The Request for Extension must be received by the City Representative within seven (7) calendar days of the Contractor's receipt of the Punchlist and shall include the Contractor's justification for the request and a schedule for completion of the Punchlist item. The Contractor shall also deliver to the City, all statements to support state sales and use tax refunds and any as-built drawings. The Contractor shall provide the City with a letter of approval for contract closure from any surety furnishing bonds for the Work provided on AIA Form G707 (Consent of Surety Letter) or equivalent form.

8.2. Final Payment. Upon satisfactory completion of the Work, the City Representative will provide the Contractor with a written acceptance of the Work (the "Final Acceptance"). Payment shall not be made until the City Representative has approved the payment and a notice of contractor's settlement has been published in accordance with C.R.S. §38-26-107. The City shall condition publication and final settlement upon receipt of any duly executed approvals of the corporate surety or sureties issuing the bonds required hereunder. Such final settlement shall be advertised as provided by statute at least twice, the last publication appearing at least ten (10) days prior to the date of final settlement. On the date of final settlement (or such later date as may be permitted by statute if claims are asserted or litigation is

commenced alleging nonpayment of funds due for labor, materials, supplies, etc.), payment and final settlement shall be made in full.

9. CONTRACTOR'S REPRESENTATIONS. In order to induce the City to enter into this Agreement, the Contractor makes the following representations:

9.1. The Contractor has familiarized itself with the nature and extent of the Agreement, Work, the locality, and with all local conditions and federal, state and local laws, ordinances, rules and regulations that in any manner may affect cost, progress or performance of the Work. The Contractor acknowledges an obligation to comply with all applicable laws, including the Broomfield Municipal Code, to respect property rights by working within the defined work limits or designated staging areas, and to work within the prescribed work hours. The Contractor acknowledges that use of air compression brakes ("jake brakes") within City limits is prohibited, unless otherwise posted by the City Traffic Engineer.

9.2. Before submitting a proposal, the Contractor has become fully informed regarding the Work and any materials or equipment required, including the amount or quantity thereof. No adjustment or modification shall be allowed for any misunderstanding of the Work or of equipment or material requirements, or of the provisions contained in this Contract and in the other Contract Documents.

9.3. Contractor has given the City written notice of any conflicts, errors or discrepancies that he has discovered in the Agreement and exhibits incorporated therein and the written resolution thereof by the City is acceptable to the Contractor.

10. NOTICE AND AUTHORIZED REPRESENTATIVES. Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. The City may change its representative at any time by notice to the Contractor. The Contractor shall not replace the Contractor Representative unless: (a) the City requests a replacement, or (b) the Contractor terminates the employment of the Contractor Representative and provides a satisfactory substitute. The City must approve a substitute Contractor Representative, and, if no substitute is acceptable, the City may terminate this Agreement. The Parties each designate an authorized representative as follows:

5.1 The City designates **Kelly Behling** as the authorized representative of the City under this Agreement. Email address is [kbehling@broomfield.org](mailto:kbehling@broomfield.org).

5.2 The Contractor designates **Lisa McDevitt** as the authorized representative of the Contractor under this Agreement. Email address is [lmcdevitt@wsreclamation.com](mailto:lmcdevitt@wsreclamation.com).

If the Contractor is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to [citycountyattorney@broomfield.org](mailto:citycountyattorney@broomfield.org).

Failure of City's on-site representative to call to the attention of the Contractor any defective work or deviations from the Contract Documents shall not constitute acceptance of such work by the City or relieve the Contractor of its obligation to perform the Work in strict accordance with the Contract Documents.

11. TIME EXTENSIONS AND COMPENSATION FOR DELAY.

- 11.1. Remedy. If the Contractor is delayed or disrupted in the performance of the Work, the Contractor's exclusive remedy with respect to such delay or disruption shall be as stated in this Section.
- 11.2. Time Extensions. Evaluation of all time extension requests shall be based upon the latest updated project schedule submitted to the City by the Contractor.
- 11.3. Definitions. The following words shall have the meaning set forth below:
  - 11.3.1. "Contractor Delay" is defined as delay on a particular date resulting from acts or omissions within the control of the Contractor or its subcontractors, agents or suppliers, including any delay within their joint control.
  - 11.3.2. "No-Fault Delay" is defined as delay on a particular date resulting from events beyond the reasonable control of and without the fault or negligence of either the Contractor or the City or their agents, employees, contractors, subcontractors, sub-subcontractors or suppliers.
  - 11.3.3. "Owner Delay" is defined as delay on a particular date resulting from acts or omissions within the control of the City, its agents, employees or contractors, including the City's Representative.
  - 11.3.4. "Concurrent Delay" is defined as the occurrence on a particular date of one or more instances of Owner Delay and Contractor Delay, Owner Delay and No-Fault Delay or Contractor Delay and No-Fault Delay.
- 11.4. Completion Date Adjustment. An adjustment in the Completion Date for delay on a particular date shall be made under this subparagraph if any delay on such date is classified as either Owner, No-Fault or Concurrent Delay. The adjustment in the Completion Date shall only be in proportion to the amount of the delay, which is attributable to Owner, or No-Fault Delay. No adjustment in



the Completion Date shall be allowed for the portion of the delay that is attributable to Contractor Delay, including but not limited to, that portion of a Concurrent Delay which includes Contractor Delay.

- 11.5. Price Adjustment. An adjustment in the Contract Price for delay on a particular date shall be made under this subparagraph only if such delay is classified as either Owner Delay or Concurrent Delay when such Concurrent Delay includes Owner Delay. The adjustment in the Contract Price shall only be in proportion to the portion of the delay costs, which is directly attributable to Owner Delay. No adjustment in the Contract Price shall be made for the portion of the delay costs, which is attributable to Contractor Delay, or No-Fault Delay, or that portion of a Concurrent Delay which includes Contractor Delay or No-Fault Delay or both.
- 11.6. Mitigation. An adjustment in Contract Price shall be made under this subparagraph only to the extent to which the Contractor can demonstrate that its time-related costs to complete the Work will be increased. The Contractor expressly acknowledges its obligation to minimize the cost impact of compensable delays. The Contractor shall, to the best of its ability, re-assign labor and equipment, commence unaffected portions of the Work, and otherwise minimize delay costs. In no event shall the City be liable for payment of delay costs, which could have been avoided or mitigated by any means reasonably available to the Contractor or for consequential damages.
- 11.7. Notification of Delay and Recovery. The Contractor shall notify the City as soon as practicable regarding the nature and starting date of a delay, and the activities affected, but in no case later than seven (7) calendar days after the event giving rise to the delay. In the case of a continuing delay, only one notification shall be necessary. Any claim for an extension of time for delay shall be made in writing to the City not more than ten (10) calendar days after the end of the delay; otherwise, such claim shall be waived. Recovery of delay costs shall be waived unless a request for a change order for delay costs is submitted within ten (10) calendar days after the end of the delay period. The Contractor must also provide a cost and time impact analysis with any request for a change order for delay costs. The cost impact analysis shall contain all direct and indirect labor costs, all material and equipment expenses, any and all documented impact costs related to, and/or occasioned by the Work described therein, as well as all taxes (if applicable under the provisions of this Contract), insurance and profit. Documentation supporting this cost impact analysis must be submitted at the time of the request for change order for delay costs.
12. DEFAULT AND DAMAGES. If the Contractor fails to comply with any provision of this Agreement, the Contractor shall be liable for any and all damages, including without

limitation, the cost of procuring similar supplies and services and all other costs and expenses incurred by the City because of such failure. If the Contractor fails or refuses to perform the Work on schedule, or to complete the Work in a timely and satisfactory manner, the City may terminate this Contract and the Contractor's right to proceed hereunder. If the City terminates this Contract under this paragraph, the Contractor may, at the option of the City, be required to cease any or all Work provided for under this Contract and shall be liable for any additional cost to the City for services acceptable to the City from another contractor as well as any actual damages associated with such failure to perform. The cost to complete the Work or any portion thereof which remains unperformed at the time of such termination, together with any other damages, shall be deducted from any sum payable hereunder before final payment to the Contractor.

13. LIQUIDATED DAMAGES. Time is of the essence in completing the Work. Alternatively, and in lieu of actual damages for delay, in the event of delay in the completion of the Work as specified beyond the Completion Date, it would be difficult to determine the exact amount of the loss or damages suffered by the City due to delays in completion of the Work. However, the City has attempted to forecast a reasonable daily amount as compensation for the damages incurred due to late completion caused by the Contractor, based upon considerations which include, but are not limited to, public inconvenience and additional contract administration costs. Therefore, the Contractor will be liable to the City, as liquidated damages (and not as a penalty), in the amount of **\$250** for each and every calendar day beyond the Completion Date. The City reserves the right to deduct said liquidated damages from any amount due the Contractor under this Agreement or, at its option, to collect such liquidated damages directly from the Contractor or its surety.
14. PERFORMANCE AND PAYMENT BONDS. In accordance with C.R.S. §38-26-105, if the Contract Price exceeds \$50,000, the Contractor shall furnish at its expense a separate performance bond and labor and materials bond, each for an amount not less than one hundred percent (100%) of the Contract Price. The bonds shall be issued by a qualified corporate surety licensed to transact business in Colorado. If at any time during performance of the Work the surety on the bonds shall be disqualified from doing business in Colorado, or shall become insolvent or otherwise impaired, the Contractor shall furnish bonds from an alternate surety acceptable to the City. The bonds shall remain in effect through Final Acceptance, and continuing in effect through completion of all warranty and guaranty work and shall be delivered to the City prior to the commencement of the Work. The Contractor shall secure an increase in the bonds in an amount equal to the cost of any additional work authorized pursuant to a duly executed change order or contract amendment.
15. COLORADO LABOR. If the Contract Price exceed \$500,000, the Contractor shall employ not less than eighty percent of Colorado labor of each type or class of labor in the

several classifications of skilled and common labor to perform the work under this Agreement in accordance with the provisions of C.R.S. §8-17-101 et seq.

16. INDEPENDENT CONTRACTOR. The Contractor is an independent contractor as provided in C.R.S. § 8-40-202(2). The Contractor is not entitled to workers' compensation benefits and the Contractor is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.
17. INDEMNIFICATION. The Contractor expressly agrees to indemnify, defend and hold harmless the City, its officers, employees and insurers from and against all claims, damages, losses, expenses and demands, including court costs, attorney's fees and expenses, due to injuries, losses or damages arising out of, resulting from, or in any manner connected with the Contractor, its officers, employees, subcontractors or agents in connection with the performance of the services pursuant to this Agreement. Except for workers' compensation, disability benefits or other similar employee benefit claims, Contractor is not obligated to indemnify the City hereunder for that portion of any claims, damages, losses, demands, and expenses arising out of or resulting from any negligent act or omission of the City, or its agents and employees. This indemnification is intended to comply with and be subject to C.R.S. 13-50.5-102(8), as amended from time to time. In the event that any such suit or action is brought against the City, the City will give timely notice thereof to the other Party.
18. INSURANCE. To assure the City that the Contractor is always capable of fulfilling specified indemnification obligations, the Contractor shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit B. Current proof of such insurance is attached at Exhibit B, incorporated by this reference. However, proof of insurance attached as Exhibit B shall not be deemed to limit or define obligations of Contractor as provided elsewhere in this Agreement, and Contractor should rely on its expertise to obtain additional insurance coverage needed for the City and Contractor in its performance hereunder.
19. APPROVAL OF SUBCONTRACTORS AND CONSULTANTS. The Contractor shall not employ any subcontractors or consultants without the prior written approval of the City Representative. Prior to commencing any work, each subcontractor or consultant shall provide the appropriate insurance as required for the Contractor under this Agreement. The Contractor shall be responsible for coordination of the work and the acts and omissions of its agents, employees, subcontractors, consultants and suppliers, and shall bind each to the terms of this Agreement so far as are applicable. This Agreement is voidable by the City if subcontracted by the Contractor without the express written consent of the City.
20. WARRANTY.

- 20.1. Warranty Period. The Contractor warrants that it will perform the Work in a timely, accurate and complete manner in accordance with the provisions of this Agreement. The Contractor warrants that the materials and/or workmanship will conform to the Contract Documents and that the materials used will be of good quality and new and that the Work shall be free from defects. The Contractor shall guarantee the Work against defects in workmanship and materials for a period of **2 years**, commencing on the date of final acceptance of the Work by the City Representative (the “Warranty Period”). The Contractor shall also assign to the City any longer term guarantee of materials used by the Contractor as may be provided by the manufacturer. The Contractor shall promptly replace any materials or re-perform any portion of the Work found to be defective within the Warranty Period in accordance with this Agreement and without expense to the City. The time allowed for such corrective action shall be mutually agreed upon by the City and the Contractor. If the Contractor fails to proceed promptly in accordance with these guarantees, the City reserves the right to place the Contractor in default of its contractual obligations and may have the Work performed at the expense of the Contractor. This provision shall survive the completion of the Work and the termination of this Agreement. The above guarantee does not limit any claims that the City may otherwise have against the Contractor.
- 20.2. Warranty Verification. At least 60 calendar days prior to the expiration of the Warranty Period, the City Representative shall have the option to make an inspection to determine whether the Work has been completed in accordance with this Agreement and may submit a written list of any defects to the Contractor (the “Warranty Work”). In the event the City chooses this option, the Contractor shall promptly correct all Warranty Work without additional cost to the City within the Warranty Period. If any Warranty Work cannot be corrected within the Warranty Period, the Contractor shall submit a letter to the City Representative for approval requesting an extension of time to complete such item (the “Request for Extension of Warranty Work”). The Request for Extension of Warranty Work must be received by the City Representative within seven calendar days of the Contractor’s receipt of the Warranty Work and shall include the Contractor’s justification for the request and a schedule for completion of the Warranty.
21. NO THIRD PARTY BENEFICIARIES. This Agreement is intended to describe the rights and responsibilities only as to the parties hereto. This Agreement is not intended and shall not be deemed to confer any rights on any person or entity not named as a party hereto.
22. FINANCIAL OBLIGATIONS OF THE CITY. All financial obligations of the City under this Agreement are subject to appropriation, budgeting, and availability of funds to discharge such obligations. Nothing in this Agreement shall be deemed to pledge the

City's credit or faith, directly or indirectly, to the Contractor. If funds for this Agreement are not appropriated and budgeted in any year subsequent to the fiscal year of execution of this Agreement as determined by the City, this Agreement may be terminated by the City upon written notice to the Contractor. The City's fiscal year is currently the calendar year.

23. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
24. INTEGRATION AND AMENDMENT. This Agreement represents the entire agreement between the Parties and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the Parties. For purposes of clarity, the terms and conditions of any Contractor invoice, Contractor timesheet, or other form, including but not limited to indemnification, limitation of liability, or cancellation fees, shall be void and of no effect against the City notwithstanding any signatures on such form by a City employee. The Contractor's rights and obligations shall be solely governed by the terms and conditions of this Agreement.
25. SEVERABILITY. If any provision of this agreement as applied to either Party or to any circumstance shall be adjudged by a court to be void or unenforceable, the same shall in no way affect any other provision of this Agreement, the application of any such provision in any other circumstances, or the validity or enforceability of the Agreement as a whole.
26. ADDITIONAL DOCUMENTS OR ACTION. The parties agree to execute any additional documents or take any additional action that is necessary to carry out this Agreement.
27. MINOR CHANGES. The Parties executing this Agreement are authorized to make nonsubstantive corrections to this Agreement and attached exhibits, if any, as they consider necessary.
28. DOCUMENTS. All drawings, analyses, plans, tests, maps, surveys, electronic files and written material of any kind generated in the performance of this Agreement or developed specifically for work performed under this Agreement shall remain the sole and exclusive property of the City, and the other Party shall not provide copies of any such material to anyone without the express written consent of the City.
29. RECORDS RETENTION. The Contractor shall maintain complete and accurate records of time spent and materials used for performance of the Work, together with any invoices, time cards, or other supporting data reasonably requested. All records, data and documentation shall be retained by the Contractor for a period of not less than three (3) years after completion of the Work, and shall be subject to review, inspection and copying by the City upon reasonable notice.

30. OFFICIALS NOT TO BENEFIT. No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom. The Contractor warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Contractor, to solicit or secure this Agreement.
31. SALES TAX EXEMPTION. The Contractor and its subcontractors, consultants and suppliers will not be required to pay Colorado state sales and use taxes on property incorporated into the Work. The Contractor shall obtain a sales tax exemption permit from the State of Colorado Department of Revenue, if necessary, to obtain materials for the Work without the payment of Colorado state sales tax.
32. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
33. BINDING EFFECT. This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors, heirs, and assigns, provided that nothing in this paragraph shall be construed to permit the assignment of this Agreement except as otherwise expressly authorized herein.
34. DAYS. If the day for any performance or event provided for herein is a Saturday, a Sunday, a day on which national banks are not open for the regular transactions of business, or a legal holiday pursuant to C.R.S. § 24-11-101(1), such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.
35. NO PRESUMPTION. The Parties to this Agreement and their attorneys have had a full opportunity to review and participate in the drafting of the final form of this Agreement. Accordingly, this Agreement shall be construed without regard to any presumption or other rule of construction against the Party causing the Agreement to be drafted.
36. GOOD FAITH OF PARTIES. In the performance of this Agreement or in considering any requested approval, acceptance, or extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, capriciously, or unreasonably withhold, condition, or delay any approval, acceptance, or extension of time required or requested pursuant to this Agreement.
37. WAIVER OF BREACH. This Agreement or any of its provisions may not be waived except in writing by a Party's authorized representative. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

38. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Colorado. Any claims or litigation arising under this Agreement will be brought by the Parties solely in the District Court, Broomfield County, Colorado.
39. LAWS TO BE OBSERVED. The Contractor shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees. The Contractor shall procure all necessary approvals, licenses and permits at its own expense; provided, that, the Contractor will be able to receive no cost permits when such permits are issued by the City directly.
40. TERMINATION. The City reserves the right to terminate this Contract, in whole or in part, with or without cause by written notice to the Contractor. In the event of termination, the Contractor shall incur no additional expenses and shall perform no further Work for the City under this Agreement after the date of receipt of the notice of termination, unless otherwise specified by the City. The City shall pay the Contractor for all work satisfactorily performed prior to receipt of the notice of termination and for other services required by the City to be completed prior to termination and satisfactorily performed.
41. SURVIVAL OF OBLIGATIONS. Notwithstanding anything to the contrary, the Parties understand and agree that all terms and conditions of this Agreement that require continued performance or compliance beyond the termination or expiration of this Agreement, including without limitation the indemnification provision, shall survive such termination or expiration and shall be enforceable against a Party if such Party fails to perform or comply with such term or condition.
42. DIGITAL ACCESSIBILITY STANDARDS. In 2021, the State of Colorado adopted HB21-1110 relating to the digital accessibility standards required to be implemented under the Colorado Anti-Discrimination Act which makes it unlawful to discriminate against individuals with a disability. In order to comply with the law on or before July 1, 2024, the Contractor shall ensure that all digital deliverables and digital technology provided pursuant to the terms of this Agreement shall comply with at least the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA, or such updated standard as the Colorado Governor's Office of Information Technology may adopt from time-to-time.
43. EXECUTION; ELECTRONIC SIGNATURES. This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon

any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.

*[The remainder of this page is intentionally left blank.]*



This Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 20\_\_\_\_.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

\_\_\_\_\_  
Mayor  
One DesCombes Drive  
Broomfield, CO 80020

ATTEST:

\_\_\_\_\_  
City and County Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
City and County Attorney's Office

CONTRACTOR:

**Western States Reclamation LLC**

By: 

Name: Colby Reid, CEO

Address: 3756 Imperial Street  
Frederick, CO  
80516

EXHIBIT A

COST PROPOSAL (BID FORM)

# BID FORM

## Northmoor Park Playground Project - 0AZ0038

*Round ALL unit prices to the nearest penny*

All bids shall be submitted on this bid form provided. The quantities appearing in the bid form are estimates prepared for the comparison

### BASE BID

ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
1	Mobilization and General Conditions	LS	1	\$6,365.00	\$ 6,365.00
2	Construction Surveying	LS	1	\$1,785.00	\$ 1,785.00
3	Clear and Grub	SF	800	\$4.65	\$ 3,720.00
4	Stripping and Stockpile topsoil	SF	800	\$1.95	\$ 1,560.00
5	Cut, Fill and Compact Onsite Material	CY	90	\$35.00	\$ 3,150.00
6	Demolition	LS	1	\$12,950.00	\$ 12,950.00
7	Earthwork	LS	1	\$2,670.00	\$ 2,670.00
8	Tree Protection - 6' Chain Link	LF	545	\$10.00	\$ 5,450.00
9	Concrete Ramp	EA	1	\$9,625.00	\$ 9,625.00
10	Poured In Place (Gravel Base Course)	SF	2,160	\$31.50	\$ 68,040.00
11	PIP to EWF Transition	LF	75	\$134.00	\$ 10,050.00
12	Engineered Wood Fiber	SF	5,985	\$6.65	\$ 39,800.25
13	Underdrain System	LS	1	\$7,675.00	\$ 7,675.00
14	Kompan - 'Green Monster' Climber (Delivery, 5 miles or	EA	1	\$ 165.00	\$ 165.00
15	Kompan - 'Green Monster' Climber (Install)	EA	1	\$ 14,350.00	\$ 14,350.00
16	Kompan - Swings (2 Belt, 1 Disc Swing) (Delivery, 5	EA	1	\$ 165.00	\$ 165.00
17	Kompan - Swings (2 Belt, 1 Disc Swing) (Install)	EA	1	\$ 14,350.00	\$ 14,350.00
18	IDS - Mesa Verde Climber (Delivery, 5 miles or less)	EA	1	\$ 165.00	\$ 165.00
19	IDS - Mesa Verde Climber (Install)	EA	1	\$ 14,350.00	\$ 14,350.00
20	Earthscapes - Stepper Cluster S1 (Delivery, 5 miles or	EA	1	\$ 165.00	\$ 165.00
21	Earthscapes - Stepper Cluster S1 (Install)	EA	1	\$ 10,900.00	\$ 10,900.00
22	Nature's Instruments - Thunder Drums (Delivery, 5 miles	EA	1	\$ 165.00	\$ 165.00
23	Nature's Instruments - Thunder Drums (Install)	EA	1	\$ 3,990.00	\$ 3,990.00
24	Nature's Instruments - Chime Fence (Delivery, 5 miles or	EA	1	\$ 165.00	\$ 165.00
25	Nature's Instruments - Chime Fence (Install)	EA	1	\$ 3,725.00	\$ 3,725.00
26	Nature's Instruments - Soaring Amadinda (Delivery, 5	EA	1	\$ 165.00	\$ 165.00

27	Nature's Instruments - Soaring Amadinda (Install)	EA	1	\$ 7,330.00	\$ 7,330.00
28	Stabilized Crusher Fines	SF	50	\$ 17.50	\$ 875.00
29	6" Concrete Edger	LF	20	\$ 94.50	\$ 1,890.00
30	Seat Boulders	EA	7	\$ 1,230.00	\$ 8,610.00
31	Soil Preparation & Sod	SF	475	\$ 8.35	\$ 3,966.25
32	Concrete Washout	EA	1	\$ 1,685.00	\$ 1,685.00
33	Inlet Protection	EA	5	\$ 671.00	\$ 3,355.00
34	Vehicle Tracking Control	EA	1	\$ 3,710.00	\$ 3,710.00
35	Erosion Control Maintenance (months)	EA	3	\$ 4,435.00	\$ 13,305.00
36	<b>FORCE ACCOUNT: Irrigation Adjustment and Repair</b>	<b>F/A</b>	<b>1</b>	<b>\$ 250.00</b>	<b>\$ 250.00</b>
<b>BASE BID COST</b>					<b>\$ 280,636.50</b>

ADD ALTERNATE 1 - DRY WELL					
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
30	Dry Well	LS	1	\$ 1,595.00	\$ 1,595.00
<b>ADD ALTERNATE 1 COST</b>					<b>\$ 1,595.00</b>

ADD ALTERNATE 2 - CULVERT CRACK REPAIR					
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
31	PIP Key at Existing Concrete	LF	80	\$ 127.00	\$ 10,160.00
<b>ADD ALTERNATE 2 COST</b>					<b>\$ 10,160.00</b>

ALTERNATE 3 - TREE PROTECTION					
ITEM NO.	DESCRIPTION	UNIT	QUANTITY	UNIT PRICE	TOTAL COST
32	Tree Protection - 4' Orange Safety/Snow Fence	LF	545	\$ 2.85	\$ 1,553.25
<b>ALTERNATE 3 COST</b>					<b>\$ 1,553.25</b>

EXHIBIT B

INSURANCE REQUIREMENTS



## City of Broomfield

### City Council Regular Meeting

#### Proposed Resolution HyperFiber Master License Agreement

Meeting	Agenda Group	
Tuesday, August 13, 2024, 6:00 PM	Consent Items	Item: 6F
Presented By		
Katie Allen		
Community Goals		
<input checked="" type="checkbox"/> Financial Sustainability and Resilience <input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community		

#### Overview

[View Correspondence](#)

HyperFiber of Colorado, LLC (HyperFiber) is requesting a Master License Agreement to install fiber-to-home infrastructure within Broomfield rights-of-way. Section 14-10-060 (A) of the Broomfield Municipal Code and section 17.9 of the Charter require approval of the City Council to use and occupy Broomfield right-of-way. Chapter 14-10 of the Broomfield Municipal Code regulates the use of public rights-of-way by requiring private users who construct, excavate, and work in Broomfield's rights-of-way to obtain Broomfield's permission to do so. Chapter 14-10 provides for a permit application, insurance and indemnification by users, standards for repair and restoration, and fees and charges.

#### Attachments

[HyperFiber License Agreement Council Memo.pdf](#)

[Resolution 2024-63 HyperFiber License Agreement.pdf](#)

[HyperFiber Master License Agreement for Fiber in the ROW - 2024 - Final For Signature 6.25.2024 copy \(1\).pdf](#)

## Summary

### [View Correspondence](#)

HyperFiber of Colorado, LLC (HyperFiber) is requesting a Master License Agreement to install fiber-to-home infrastructure within Broomfield rights-of-way.

Federal law and state law provide some guidance on the City’s ability to regulate the services HyperFiber desires to provide. In accordance with Section 253 of the Telecommunications Act of 1996, federal law requires that no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of *any* entity to provide any interstate or intrastate telecommunications services. Moreover, Colorado state law, C.R.S. § 38-5.5-101 et seq, mirrors federal law and requires that access to rights-of-way and oversight of that access must be competitively neutral (i.e. the City can’t favor or disfavor any particular provider) with respect to the City’s regulations of companies in this area. The City still does retain the ability to use our police power to enforce our rules on the use of the right-of-way which are established in Chapter 14-10 of the Broomfield Municipal Code that has been in effect since 2000.

Further, City regulations under Section 14-10-060 (A) of the Broomfield Municipal Code require approval of the City Council to use and occupy Broomfield right-of-way. Chapter 14-10 of the Broomfield Municipal Code regulates the use of public rights-of-way by requiring private users who construct, excavate, and work in Broomfield’s rights-of-way to obtain Broomfield’s permission to do so. Chapter 14-10 provides for a permit application, insurance and indemnification by users, standards for repair and restoration, and fees and charges.

Broomfield has previously approved telecommunications infrastructure to be installed within the public rights-of-way. These previous installations were approved by Council through a revocable permit and the installations have included fiber backbone infrastructure and connections to specific facilities.

Recently, Broomfield has been approached by multiple new internet service providers who are interested in constructing fiber-to-home infrastructure to provide broadband services to residents and, in some cases, businesses within Broomfield. Fiber internet is typically faster than cable internet and would provide additional internet provider options for Broomfield residents and businesses within Broomfield. Under C.R.S. § 38-5.5-101 et seq telecommunications providers have the right to occupy and utilize the public rights-of-way and municipalities must provide equal access to rights-of-way for telecommunication providers.

The revocable permit form of agreement that was previously used and approved is not ideal for what is being proposed with fiber-to-home. In order to facilitate the orderly installation of fiber-to-home infrastructure, staff has created a standard Master License Agreement template for any entity desiring to construct such fiber facilities in Broomfield. Broomfield worked with Ken Fellman with Wilson Williams Fellman Dittman in Louisville because he has extensive experience in this field and has negotiated these types of agreements with other municipalities. Staff customized the agreement from Mr. Fellman to better fit Broomfield’s exact needs. All of the master license agreements will be substantially similar and all providers will have equal access to the right-of-way, but staff will have the ability to limit or regulate facilities in areas where existing utilities already exist or where there is no more room for additional utilities in a corridor. In those instances, staff will assist providers with finding alternate (less crowded) routes to provide the services. The master license agreement may be terminated by the City if the provider materially breaches the agreement.



HyperFiber currently intends to construct infrastructure within Broomfield northeast of US-36. This Master License Agreement approves phased installation throughout the City. The exact location and phasing of the improvements will be defined by future Site License Agreements, which incorporates all of the terms of the Master License Agreement and will include a map of the locations for the fiber facilities, that will be reviewed and approved by the City and County Engineer. HyperFiber will be applying to Broomfield for permits to construct specific phases/areas. The Master License Agreement allows for additional fiber optic installations to be approved by the City and County Engineer should HyperFiber decide to expand southwest of US-36.

The majority of the work will be performed using directional boring to avoid open trenching to protect Broomfield streets. A \$500 application fee will be submitted to Broomfield as required by Chapter 14-10. Applications will be submitted for Public/Private Improvement Permits for the work. An insurance certificate will be provided.

Broomfield IT staff remains focused on the design and construction of a secure, redundant internal network to serve Broomfield's assets including buildings, wastewater lift stations, water pump stations, and traffic signals. This Broomfield-owned communication network will also be the backbone for a variety of software and the Internet of Things (IoT) delivering connected solutions to City buildings and assets. Additionally, the design and build-out of the City's backbone infrastructure includes additional facilities intended to provide opportunities for future lease options with internet service providers to potentially provide a revenue stream to help offset the City's internal costs.

Broomfield will work with HyperFiber to add extra conduit along several segments to be owned by Broomfield for future fiber optic cable installation in accordance with Broomfield's Fiber Infrastructure Master Plan in accordance with B.M.C. §14-10-120(F) and (G).

## Financial Considerations

HyperFiber of Colorado, LLC (HyperFiber) is required to pay Broomfield a \$500 application fee and applicable permit fees.

## Prior Council or Other Entity Actions

This is the first Master License Agreement for a company to install fiber-to-home infrastructure. The following Revocable permits for fiber installations were previously authorized by Council:

On October 24, 2000 Council approved Resolution No. [2000-245](#) for a Fiber Optics Revocable Permit for Metromedia Fiber Network Services, Inc.

On February 11, 2003 Council approved Resolution No. [2003-27](#) for a Fiber Optics Revocable Permit for Yipes Enterprise Services, Inc.

On April 23, 2013 Council approved Resolution No. [2013-34](#) for a Fiber Optics Revocable Permit for Zayo Group, LLC.

On June 11, 2013 Council approved Resolution No. [2013-77](#) for a Fiber Optics Revocable Permit for Unite Private Networks, LLC.

On November 18, 2014 Council approved Resolution No. [2014-182](#) for a Fiber Optics Revocable Permit for Teleport Communications America, LLC.

On February 23, 2016 Council approved Resolution No. [2016-23](#) for a Fiber Optics Revocable Permit for Level 3 Communications, LLC.

On December 12, 2017 Council approved Resolution No. [2017-211](#) for a Fiber Optics Revocable Permit for MCImetro Access Transmission Services (Verizon).

On May 21, 2019 Council approved Resolution No. [2019-113](#) for a Fiber Optics Revocable Permit for Adams 12 Five Star Schools.

## **Boards and Commissions Prior Actions and Recommendations**

N/A

## **Proposed Actions / Recommendations**

If Council desires to approve the Master License Agreement, the appropriate motion is...

**That Resolution 2024-63 be adopted.**

## **Alternatives**

Do not approve the agreement.

# RESOLUTION NO. 2024-63

A resolution approving a Master License Agreement by and between the City and County of Broomfield and HyperFiber of Colorado, LLC

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

The Master License Agreement by and between the City and County of Broomfield and HyperFiber of Colorado, LLC to use rights-of-way for fiber optic services is hereby approved.

## Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the City and County Clerk is authorized to attest the Master License Agreement in form approved by the City and County Attorney.

## Section 3.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024

The City and County of Broomfield, Colorado

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Mayor

Attest:

---

Office of the City and County Clerk

Approved as to form:

*NCR*

---

City and County Attorney

**MASTER LICENSE AGREEMENT FOR FIBER OPTIC NETWORK BY AND BETWEEN THE CITY AND  
COUNTY OF AND HYPERFIBER OF COLORADO, LLC**

This Master License Agreement (this “Agreement”), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), is entered into by and between the City and County of Broomfield, a Colorado home rule municipality and county (the “City”), and HyperFiber of Colorado, LLC, a Delaware limited liability company (the “Company”), each a “Party”, and collectively, the “Parties”.

**RECITALS**

A. The City holds good and valid title to the Public Rights-of-Way (“ROW”), as defined in Section 1.7 below, throughout the City and desires to protect and preserve the ROW. The City further maintains police power authority to regulate access to and use of the ROW in a manner that protects the public health, safety, and welfare, consistent with Applicable Law.

B. The Company is in the business of providing Services to its customers through fiber-based telecommunications and broadband networks, including the Network (as defined in Section 1.6 below) to be installed in the City, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”) and pursuant to this Agreement.

C. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Equipment, as defined in Section 1.4 below, in the Public Rights-of-Way in the locations detailed in Supplemental Sites Licenses, a sample of which is attached hereto as Exhibit A.

D. The City desires to grant to the Company a non-exclusive license (“License”) for the above-stated purpose, upon the terms and conditions contained below, and in accordance with Applicable Law.

**AGREEMENT**

In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City hereby grants to the Company, with respect to such interest as the City may have in the ROW, the authorization to install, construct, operate, maintain, repair, inspect, remove and replace the Equipment in, under, or along the ROW, subject to the following conditions:

1. **Definitions.** The following definitions shall apply generally to the provisions of this Agreement:
  - 1.1. **“Applicable Law”** means any statute, ordinance, judicial decision, order (including, without limitation, FCC orders), executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.
  - 1.2. **“Claims”** means (1) losses, liabilities, costs and expenses of any sort, including reasonable attorneys’ fees; (2) fines and penalties; (3) environmental costs, including, but not limited to, investigation,

removal, remedial, and restoration costs, and consultant and other reasonable fees and expenses; and (4) any and all other reasonably related costs or expenses.

- 1.3. **“Equipment”** means electronics equipment, transmission equipment, shelters, conduit, coaxial cables, mounts, generators, containment structures, hangers, pull boxes, conduit, pedestals, brackets, fiber optic cable and other accessories and component equipment related to the operation of the Company’s Network.
  - 1.4. **“Hazardous Substance”** means any substance or material defined or designated, or other similar term by any Applicable Law presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include without limitation any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.
  - 1.5. **“Network”** or collectively **“Networks”** means one or more of the neutral-host, broadband communication or telecommunication systems operated by the Company to serve its customers in the City.
  - 1.6. **“Public Rights-of-Way,” “Public ROW” or “ROW”** means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include City parkland, trails, state or federal rights-of-way, or any property owned by any person or entity other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any such person or entity.
  - 1.7. **“Services”** means the telecommunications or broadband services provided through the Network by the Company to its customers. Services also includes the lease of the Network, or any portion thereof, to another person or entity, or the provision of capacity or bandwidth on the Network to another person or entity, provided that the Company at all times retains exclusive control over the Network and remains responsible for locating, servicing, repairing, relocating, or removing its Network pursuant to the terms of this Agreement.
  - 1.8. **“Standards”** means the current version of the Broomfield Standards and Specifications.
2. **Term.** This Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years from the date it has been executed by both Parties, unless it is earlier terminated by either Party in accordance with the provisions herein. Provided, however, that if the Company’s Network is not operational and providing Services to customers within the City within two (2) years of the Effective Date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon ninety (90) days written notice. This Agreement will be automatically extended for an additional term of ten (10) years from the expiration date of the current term, unless either

Party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations) at least three (3) years before the expiration of this Agreement. Notwithstanding the expiration of this Agreement, and so as long as the Parties are negotiating in good faith, and until such time as either a new agreement has been reached or the City has determined not to renew this Agreement, the Company shall have the right to continue to occupy and use the ROW pursuant to the terms of this Agreement.

3. **Scope of Agreement.** All rights expressly granted to the Company under this Agreement, which shall be exercised at the Company's sole cost and expense, shall be subject to Applicable Law. All rights expressly granted to the Company under this Agreement shall be subject to the City's lawful exercise of its police powers and the prior and continuing right of the City under Applicable Law to use any parts of the Public ROW, exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the Public ROW. Except with respect to the License granted herein, nothing in this Agreement shall be deemed to grant convey, create, or vest in the Company a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to, and conform with, Applicable Law. Nothing in this Agreement shall be deemed to grant a franchise, nor permit the City to collect a franchise fee. This Agreement does not grant any authority to utilize the Public ROW to construct a cable system, provide cable or other video programming services, construct a wireless communications facility, deploy wireless communications facilities in the ROW, or provide wireless communications services. The Company acknowledges that the City has made no warranties or representations regarding the fitness or suitability of any ROW for the installation or operation of the Equipment and the Company shall accept the Property AS IS. Any performance of work or costs incurred by the Company contemplated under this Agreement is at the Company's sole risk. The Company understands there is risk involved in placing the Equipment within the Public ROW and hereby releases the City, and its agents and employees, from any liability for any damage to the Equipment that may be caused by the City's construction or maintenance operations, or any other reason, and from any liability for any injury or damage incurred by the Company in its use of the Equipment within the Public ROW.
- 3.1. **City Use.** The Company acknowledges and agrees that the City currently uses and intends to continue to use the ROW for road purposes, and the rights granted to the Company for use of the ROW are subject to the rights of the City to use the property for a public road, sidewalk, shoulder, snow or material storage, drainage, water, wastewater, network, and other utilities or such other purposes as permitted by law which the City expressly reserves. In the event the City desires use of the ROW where the Equipment exists for future improvement projects, the City shall be under no obligation to pay to the Company any damages for removal or relocation of the Equipment and the Company shall relocate or remove such Equipment in accordance with the terms of this Agreement as more particularly set forth below.

4. **Construction.** The Company intends to install its Network at the locations to be approved by the City and submitted as a request for Supplemental Site License. The Company shall be required to obtain a Supplemental Site License and any permits required from the City for the installation of the Equipment (currently referred to as a Public/Private Improvement Permit (PPIP)) for each Equipment location or to perform any excavation or other work in the Public ROW in connection with its Network deployment. The Company shall use the form attached as Exhibit A prior to beginning construction in conjunction with the City's standard application for work within the ROW for the initial construction. The City will authorize the Company to commence construction with the grant of a Supplemental Site License and the provision of all necessary permits for the work within the ROW. The City's granting or approval applicable to such licenses and permits shall not be unreasonably, withheld, conditioned, or delayed. Supplemental Site Licenses shall be approved administratively by staff and signed by the City Engineer. The intent of the Parties is that the Supplement Site License will show a larger area of where the Equipment is anticipated to be installed generally, with the individual permits for ROW construction providing more detail as to the exact location and manner of construction. Pursuant to the Standards, any person performing work that requires a permit shall obtain a Contractor's License as set forth in Broomfield Municipal Code Chapter 15.32. If the Company's construction requires any deviation in any manner from the approved plans, the Company shall notify and obtain prior written approval from the City for any changes in advance of any construction or alteration. The Company shall pay for and repair, at its sole expense, any damage to existing facilities located on the Public ROW, whether owned by the City or others, that occurs as a result of the Company's construction or alteration of the Equipment.
- 4.1. **Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment meets any of the criteria for a permit per the Standards, the Company shall apply for the appropriate permits and pay any standard and customary permit fees. The City shall respond to the Company's requests for permits in the ordinary course of its business and shall otherwise cooperate with the Company in facilitating the deployment of the Network in the Public ROW in a reasonable and timely manner, provided that, the City may withhold a permit if the Company has outstanding permits that are not diligently being completed in the sole and absolute discretion of the City, or the City does not have adequate staffing to manage the permit requests currently in process with the City. As a condition of obtaining any permit that involves digging or other excavation in the Public ROW, the Company shall comply with all documents and processes set forth in the Standards and at a minimum, as part of its permit application submittal materials, identify on its fiber plan and profile set the following information:
- 4.1.1. All pothole and boring locations, the boring and installation method for its Equipment, number and size of conduits, cover depth of conduit, dimension clearance from the proposed conduit and existing utilities.
- 4.1.2. The horizontal and vertical locations of any other existing

underground utility or other facilities in the Public ROW in the proximity of the proposed work area, in accordance with state laws for subsurface utility engineering and any additional City requirements, and what work will be self-performed and what work, if any, will be performed by subcontractors.

- 4.1.3. For each permit request, the Company shall provide construction drawings for review by the City, that identifies all existing and proposed utilities, identifies the location of all Equipment to be installed (including the equipment shelters, cables, conduit, pull boxes, pedestals, fiber runs, point of demarcation, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment), ROW limits, existing or proposed easements, existing trees, fences, and other above ground improvements, traffic control signs and equipment, any other existing improvements, where the installation will occur (back of sidewalk, in the paved surface of the roadway), a profile with potholed locations of existing utility crossings (including fiber, water, sanitary sewer, and stormwater lines), a plan for conducting emergency repairs and all anticipated, expected restoration work. Where applicable, the design documents shall include specifications on design and ADA compliance.
- 4.1.4. If revisions to the construction drawings are required by the City, the Company shall provide revised drawings for review until final approval. The Company shall then include the final construction drawings with the appropriate permit application. The Company shall be allowed to seek permits year-round and all permits will expire as defined by the Standards. All work associated with a permit must be completed, including all restoration of pavement, sidewalks, landscaping, and other items, before a permit can be closed.
- 4.1.5. Plans shall show the Company's drawings of Equipment as compiled in accordance with the City's current practices and procedures as they are in effect from time to time, as well as any information required by Applicable Law.
- 4.1.6. "As-Built" drawings and design files with respect to the Equipment will be provided to the City as provided in the Record Drawings Section of Standards.
- 4.2. **Obtaining Required Permits Using Shallow/Micro Trenching.** The City currently does not have separate standards and specifications for the installation of Equipment using shallow, or micro, trenching techniques. As a result, in addition to the applicable requirements set forth Section 4.1, the following standards shall apply for all shallow, or micro, trenching work within the City.
  - 4.2.1. NOT APPLICABLE
- 4.3. **Location of Equipment.** Potholes, analysis of as-built drawings, or



investigation of existing utility infrastructure must be performed so any conflicts with existing utilities (including fiber, water, sanitary sewer, and stormwater lines) are to be shown in the profile view of the drawings to be approved by the City. Prior to construction on each permit, the Company and its contractors must physically identify the locations of existing underground utilities within the path of construction via potholing. Potholes must be filled according to the current Standards. GIS data on the utilities and pipe material, if it can be visually identified, shall be updated on the engineering plans and as-built drawings. In relation to other utilities, all Equipment shall be placed according to the Standards. All Equipment shall be placed underground or, if approved by the City, via attachment to existing utility poles in compliance with the pole owner process for attachment. Any Equipment proposed to be located above ground must be screened in the manner approved by the City and the approval of the entity responsible for the maintenance of the property on which the Equipment is located.

- 4.4. **Obtaining Required Permits for Maintenance and Repair Work.** The Company, at its sole cost and expense, shall maintain the Equipment and every part thereof in good condition and repair, and perform any necessary maintenance functions. Any damage to the Equipment shall be repaired in a timely manner, but in no event later than 30 calendar days after a written request for such repairs from the City. The same process as described in Section 4.1 and 4.2, as applicable, shall be followed for work within the Public ROW relating to the repair or maintenance of the Network after installation; provided, that, a new Supplemental Site License will not be required after the initial installation of the Equipment, but any other necessary permits and performance guarantees for the performance of the work shall be secured as provided herein or in the Standards.
- 4.5. **Fees.** The Company shall apply for the appropriate permits and pay any standard and customary permit fees. In the event that the staffing levels are not sufficient to process Supplement Site Licensee and/or related permits for work in the ROW, whether due to City staffing levels or the number of permits being requested within the City, the City may notify the Company of its ability to add additional staffing capacity through the use of third party contractors. In such an event, the City shall notify the Company of the option to use third party contractors, and in such event the Company desires to pay the additional cost of third party consultants for the Supplement Site License and permit review and inspection work, the Company shall agree to pay the City any costs that the City incurs for such third party review, plus a 5% administrative review fee, less the applicable fees collected pursuant to the City's permit fee schedule had the work been performed by City staff. In such event, the Company shall reimburse the City for all costs and expenses associated with the third party review activities. The City shall provide invoicing to the Company documenting such costs which shall be due and payable within 21 calendar days of receipt to the City. The City will in turn use such funds to pay the third party consultants upon receipt. The purpose of this provision is to allow the City to

recover its actual costs for plan review, engineering and surveying review, and for construction observation, inspection and materials testing. If the Company elects not to pay for the additional costs, the City shall review the Supplement Site License and necessary permits in the ordinary course of business and shall not charge any additional fees, but the Company acknowledges that time for review may be extended in such an event which is not unreasonable.

- 4.6. **Public Infrastructure Security.** In accordance with the Standard's performance guarantee requirements, the Company shall provide financial security, in the form of letter of credit (in a form approved by the City) or cash deposit, for the cost to repair or reconstruct all public infrastructure anticipated to be required with any Supplemental Site License or ROW permit and the cost of any third-party contractors (as described in Section 4.5 above) engaged by the City in conjunction with the services provided herein. Rather than complete a new performance guarantee for each permit issued, the City and the Company may mutually agree upon an amount of a performance guarantee sufficient to cover the costs of the work anticipated to occur within the City for one calendar year. The Company shall provide such security in the approved form and amount prior to issuance of any required construction permit. When all required repairs or reconstruction of public infrastructure have been completed in accordance with City Standards, the City shall release the performance guarantee back to the Company in accordance with the Standards.

- 4.6.1. **Warranty.** The Company, or its contractor, shall warranty any work in the ROW for possible replacement or repairs for a period of two (2) years after completion of the work under a ROW permit. The performance guarantee shall remain in place even upon the completion of the work if additional permits are issued or anticipated to be issued. Only when no additional permits are outstanding and no additional work is contemplated by the Parties shall the performance guarantee be reduced as set forth in the Standards.

- 4.7. **Utility Notification Center.** The Company shall contact the Utility Notification Center of Colorado, <https://www.colorado811.org/>, for location of any underground utilities, and locate the Equipment as required. The Company shall use commercially reasonable efforts to coordinate with the City and any affected utilities to undertake locations in accordance with the policies of each entity.

- 4.8. **Damages to Other Utilities.** To the extent that Company or any of its contractors cause damage to other utility facilities (including network, water, sanitary sewer, and stormwater lines), if there is damage caused to any major facility, at the discretion of the City, all construction within the City shall cease in order to allow the affected utilities to have the damage repaired. Any contractor of the Company that causes damage to another utility's facilities may be forbidden by the City from doing any further work under this Agreement. Should a stop work order be issued as a result of any damage caused by the Company or any of its contractors, such stop work order may not be lifted until such time as

all damaged parties have been fully compensated for their actual damages incurred. See also Damages and Restoration below.

- 4.9. **Public Engagement.** Prior to beginning any work to install, maintain or repair its Network in the Public ROW, the Company shall first notify residents of the work (via door hangers) a minimum of 48 hours in advance of performing the work and the language on the door hangers must be approved by the City all as set forth in the Interruption of Services Section of the Standards.
- 4.10. **General Warranty.** The Company warrants that all Equipment installed by it shall be in accordance with: (a) generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with the City municipal code and any regulations promulgated thereunder (“City Regulations”); (b) the plans and specifications provided by the Company to the City and approved by the City (the “Plans”); and (c) the same standards that the Company applies to construction of its own facilities (collectively referred to as the “Construction Standards”). The Company further warrants that the Equipment shall be free from obstructions and otherwise fully comply with the Construction Standards.
- 4.11. **Non-Liability.** The Company acknowledges that the City’s review and approval of the Plans for the Equipment is done in furtherance of the general public health, safety, and welfare and that no specific relationship with, or duty of care to the Company or third parties is assumed by such review approval.
5. **Relocation of Equipment.** The Company understands and acknowledges that City may require the Company to relocate one or more of its Equipment installations horizontally or vertically. The Company shall at City’s direction relocate such Equipment, at the Company’s sole cost and expense, not later than ninety (90) days (except in the case of an emergency) after receiving written notice that the City determines that the relocation is needed. In any such case, the City shall use its best efforts (but shall not be required to incur financial costs) to afford the Company a reasonably equivalent alternate location. If the Company shall fail to relocate any Equipment as requested by the City within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the City has notified the Company that it, or another public agency or special district intends to commence its work, or, in the case of emergencies, immediately, the City or its agent, public agency or special district completing the work, shall be entitled to relocate the Equipment at the Company’s sole cost and expense, without further notice to the Company and may invoice the Company for such expenses which shall be paid promptly by the Company.
6. **Modification of Supplement Site License Prior to Installation.** In the event that (i) any of the Supplemental Site License applications has been rejected; (ii) any governmental approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority; or (iii) the Company determines the Equipment Location is no longer technically compatible or financially feasible for its use, the Company shall have the right to terminate all or part of a Supplemental Site License prior to installation of

any Equipment. Notice of the Company's exercise of its right to terminate shall be given to the City in writing as set forth in this Agreement, and shall be effective upon the dates set forth in the notice. All standard and customary permit fees paid to said termination date shall be retained by the City. Upon such termination, all or part of the Supplemental Site License, as applicable, shall be of no further force or effect except to the extent of the obligations set forth in this Agreement. The Parties may mutually agree to modify any Supplemental Site License Agreements as needed to reflect any modifications.

**7. Termination; Default; Removal and Abandonment of Equipment.**

**7.1. Termination; Default.** At any time, the Company may elect to terminate this entire Agreement or may elect to discontinue the use of only portions of the Equipment. The City shall have the right to terminate all or a portion of this Agreement for failure of the Company in the performance of any covenant or condition in this Agreement within 30 days after receipt from the City of written notice of such breach; provided, however, if the nature of the remedy reasonably requires more than 30 days to cure, the Company shall not be in default if the Company commences such remedy within such 30-day period and thereafter diligently pursues such remedy to completion.

**7.2. Notification of Discontinue Use.** If at any time the Company intends to terminate this Agreement or discontinue use of any or all Equipment, it shall notify the City in writing of the intent to discontinue use. Such notice (the "Discontinuance Notice") shall describe the Equipment for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than sixty (60) days from the date such notice is submitted to the City and the Company's intended method of removal and restoration. The methods of removal or restoration shall include the following options (as more specifically described below):

7.2.1. Removal of the Equipment from the ROW; or

7.2.2. Abandonment of the Equipment in Place.

**7.3. City's Election Upon Receipt of Discontinuance Notice.** Upon receipt of a Discontinuance Notice, the City shall have sixty calendar days (the "City's Election Period") to notify the Company of its election with respect to the discontinued Equipment (the "City's Election"). The City may elect to allow the Company to: i) require removal of the Equipment from the ROW, in its sole discretion as more particularly described below, ii) convey the Equipment to the City as described below, or iii) abandon the Equipment in place. If no election is made by the City, the Company may abandon the Equipment in place and the Equipment shall remain under the ownership of the Company. In any event, upon termination or discontinuance of use, the Company shall be required to remove at its sole cost and expense any above ground structures with foundations from the ROW upon termination of this Agreement, regardless of the election made by the City hereunder. For purposes of clarity, above ground structures with foundations does not include the removal of pull boxes or other equipment that is flush with ground level. The City shall be reimbursed by the Company for all removal costs

and expenses including administration costs to remove the above ground structures with foundations, if the Company fails to remove the same.

- 7.4. **Removal of Equipment by the Company.** The Company may not remove, destroy, or permanently disable any such Equipment until the Company has obtained the necessary permits from the City for the removal of the Equipment from the Public ROW. If the City elects for the Equipment to be removed, the Company shall obtain a permit for such removal within 60 days of the receipt of the City's Election. Once the necessary permits have been issued by the City (including receipt by the City of any performance guarantee), the Company shall remove and dispose of such Equipment and restore any property damaged by such removal, and shall complete such removal, disposal, and restoration in accordance with the terms and within the time set forth in the permit, unless additional time is requested from and approved by the City. If Company fails to complete this removal and restoration work in accordance with the approved permit, then the City, upon written notice to the Company, shall have the right at the City's sole election, but not the obligation, to perform the removal or restoration work and charge the Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. The Company shall pay to the City actual costs and expenses incurred by the City in performing the work to the extent not covered by the performance guarantee received with the permit. If the City does not remove such items at the City's cost after the Company's failure to so remove, any items of the Company's property remaining on or about the Public ROW may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner permitted by Applicable Law.

- 7.4.1. If Company does not take any action to remove its Equipment pursuant to Section 7.4 or fails to affirmatively abandon or remove its Equipment within six (6) month of the City's Election notice, then the City may, in its sole discretion, notify the Company that the Company will be deemed to have remised, released, quitclaimed, and sold to the City all title and ownership in any Equipment remaining in the Public ROW, and the permanent abandonment in place and transfer of ownership of that Equipment shall automatically vest in the City without necessity of an additional agreement or instruments of conveyance.

- 7.5. **Conveyance of Equipment to the City.** At the discretion of the City, and upon written notice of the City's Election during the City's Election Period described above, the Company may abandon the Equipment in place, and shall further convey full title and ownership of such abandoned Equipment to City in a form acceptable to City. If the City agrees to accept ownership, the Company shall execute and deliver to the City bills of sale in a format acceptable to the City, and such other documents as the City deems necessary to effectuate such transfer of ownership to the City within thirty (30) days of the City's written notice of its intent to accept the transfer. The consideration for the conveyance is the City's permission to abandon the Equipment in place.

The Company shall be responsible for all obligations as owner of the Equipment, or other liabilities associated therewith, until the conveyance is completed. Once the conveyance is completed, the City shall be the owner and responsible for the Equipment.

- 7.6. **Abandonment of Equipment in Place.** At the discretion and upon written notice of City Election, the Company may abandon the Equipment in place, but the Company still retains the responsibility for all obligations as owner of the Equipment, or other liabilities associated therewith. The Company acknowledges and agrees that any Equipment that is abandoned in place may, at a later date, be removed by the City, another public agency or special district, if such party is doing work within the ROW that requires removal of the Equipment, all without further notice to the Company.
- 7.7. **Survival.** The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.
8. **Damage and Restoration.** Unless otherwise provided by Applicable Law, whenever the installation, removal, or relocation of any Equipment is required or permitted under this Agreement, and such installation, removal, or relocation shall cause the Public ROW or any City or other public or private property to be damaged, or whenever the Company, in connection with any of its operations, causes damage to the ROW or any other public or private property, the Company, at its sole cost and expense, shall repair or cause to be repaired, the damage and return the ROW or other property in which the Equipment is located and all affected property to a safe and satisfactory condition. Any repairs or restoration, including emergency work, shall be completed as set forth in the Standards.
9. **Other Utilities, Other Service Providers.**
  - 9.1. The Company agrees and understands that if the City has permitted or allowed natural gas gathering, storage, transmission, distribution, or related facilities within the ROW, the Company has been fully advised by the City that such natural gas facilities may now transport and may continue to transport natural gas at significant pressures. The Company shall advise all employees, agents, contractors, and other persons who enter upon the Public ROW the existence and nature of such natural gas facilities and the potential danger and risk involved.
  - 9.2. The Company agrees and understands that any natural gas facilities, if located within the ROW, may be subject to cathodic protection by rectifier and related anode beds, and that City shall not be liable for stray current or interfering signals induced in the Equipment as a result of the operating of the cathodic protection system.
  - 9.3. The Company agrees and understands that if the City has permitted and allowed to be constructed electric transmission, distribution, or related facilities within the ROW, the Company has been fully advised by the City that such electric facilities may now transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. The Company shall advise all of

its employees, agents, contractors, and other persons who enter upon the Public ROW of the existence and nature of such electric facilities and the potential danger and risk involved.

10. **Hazardous Substances.** The Company agrees that the Company, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport or dispose of any Hazardous Substance on, under, about or within the area of the ROW or adjacent property in violation of any Applicable Law. Except to the extent of the negligence or intentional misconduct of the City, the Company shall pay, indemnify, defend, and hold the City harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by the Company pursuant to this Agreement. The Company shall ensure that any on-site or off-site storage, treatment, transportation, disposal, or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that the Company is only using a small portion of the ROW and that the Company shall not be responsible for any environmental condition or issue except to the extent resulting from the Company's, its agents' or contractors' specific activities and responsibilities under this Agreement.
11. **Indemnification.** The Company shall indemnify, defend, and hold the City, its employees, officers, elected officials, agents, and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage, or liability (or any Claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the Network and any Equipment, or the Company's breach of any provision of this Agreement. The Company's indemnification obligations extend to any Claims asserted by and any person or entity, including, but not limited to, employees of Company or its contractors, subcontractors, or their employees; and any Claims arising from, or alleged to be arising in any way from, the acts or omissions of Company, its sublessees, invitees, agents, or employees.
  - 11.1. The City shall give the Company timely written notice of the making of any Claim or of the commencement of any action, suit, or other proceeding in connection with any Claim. In the event such Claim arises, the City shall tender the defense thereof to the Company and the Company shall reasonably consult and reasonably cooperate with the City and County Attorney's Office while conducting its defense. The City and the Indemnified Party shall cooperate fully therein with the Company's legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.
  - 11.2. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by the Company to represent the City, the Company shall pay for all reasonable expenses incurred by the City as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the City shall select its own counsel and any other experts or consultants, subject to the Company's prior approval, which shall not be unreasonably withheld. The City's expenses hereunder shall include all

reasonable out-of-pocket expenses, such as consultants' fees.

12. **Insurance.** To assure the City that the Company is always capable of fulfilling specified indemnification obligations, the Company, and its contractors and subcontractors, shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit B. The insurance requirements set forth in Exhibit B may be updated without an amendment to this Agreement with each renewal, automatic or otherwise, of this Agreement. However, proof of insurance attached as Exhibit B shall not be deemed to limit or define obligations of the Company as provided elsewhere in this Agreement, and the Company should rely on its expertise to obtain additional insurance coverage needed for the City and the Company in its performance hereunder.
13. **Governmental Immunity.** The City and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Master License Agreement or any Supplemental Site License, immunities, limitations, coverages, or protections of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as a result of entering into this Agreement.
14. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. Either Party may change its representative at any time by notice to the other Party. The Parties each designate an authorized representative as follows:
  - 14.1. **City Representative.** The City designates the City Engineer as the authorized representative of the City under this Agreement. Email address is [engineeringpermits@broomfield.org](mailto:engineeringpermits@broomfield.org).
  - 14.2. **Company Representative.** The Company designates Justin Nelson as the authorized representative of the Contractor under this Agreement. Email address is [jnelson@hyperfiber.com](mailto:jnelson@hyperfiber.com).

If the Company is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to [citycountyattorney@broomfield.org](mailto:citycountyattorney@broomfield.org).
  - 14.3. **Emergency Contact.** The Company shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring the City to take immediate action. The Company's 24/7 call center number is: Justin Nelson - 970-412-6298.
15. **Miscellaneous Provisions.** The provisions that follow shall apply generally to the obligations of the parties under this Agreement.
  - 15.1. **Documentation.** A Company representative shall have one copy of the applicable rights of way permit issued for work authorized under any Supplemental Site License in the Public ROW and available during construction or maintenance of any Equipment.
  - 15.2. **Non-Exclusive Use.** The Parties understand and agree that the City



permits other persons and entities to install utility facilities in the ROW. In permitting such work to be done by others, the City shall not be liable to the Company for any damage caused by those persons or entities.

- 15.3. **Compliance with Laws.** The Company shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work under this Agreement, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees.
- 15.4. **Severability of Provisions.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 15.5. **No Waiver.** A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Both the City and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the City nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement, except when done so in writing by a Party's authorized representative.
- 15.6. **Federal and State Authorizations.** The Company has obtained all government licenses, permits and authorizations from the Federal Communications Commission which are required in order to provide the Services.
- 15.7. **Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado. Venue for any proceeding arising out of this Agreement shall be in the District Court, Broomfield County, Colorado.
- 15.8. **Force Majeure.** With respect to any provisions of this Agreement, the violation or noncompliance of any term of this Agreement which could result in the imposition of a financial penalty, damages, forfeiture or other sanction upon a party, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, pandemics, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such party's reasonable control, and which was not caused and could not have been avoided by a party which used its best efforts in its operations to avoid such results. If a Party believes

that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, it shall provide documentation as reasonably required by the other Party to substantiate its claim. If that Party has not yet cured the deficiency, it shall also provide the other Party with its proposed plan for remediation, including the timing for such cure.

- 15.9. **Limitation of Liability.** Except for indemnification pursuant to Section 11, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
- 15.10. **Representations and Warranties.** Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.
- 15.11. **No Third-Party Beneficiaries.** This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.
- 15.12. **Public Disclosure.** The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, §24-72-202(6), C.R.S., and accordingly may be disclosed to the public.
- 15.13. **Officials Not To Benefit.** No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom other than being provided the Services of the Company as any other customer of the Company.
- 15.14. **Co-Builds and Use of Conduit by the City.** Should the City desire to place its own facilities for City purposes in trenches or bores opened by the Company, the Company shall cooperate with the City in any construction by the permittee that involves trenching or boring in accordance with Broomfield Municipal Code §14-10-120 (F) and (G).
- 15.15. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
- 15.16. **Amendment.** This Agreement may not be amended except pursuant to a written instrument signed by both Parties. The City and County Manager has the authority to enter into amendments to this Agreement, in addition to the areas herein specifically delegated to the City Engineer by this Agreement.
- 15.17. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There

are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. Any prior oral or written agreements or licenses between the Parties concerning use of the Public ROW is superseded by this Agreement.

- 15.18. **Execution; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement.

*[The remainder of this page is intentionally left blank.]*

This Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 2024.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

\_\_\_\_\_  
Mayor  
One DesCombes Drive  
Broomfield, CO 80020

ATTEST:

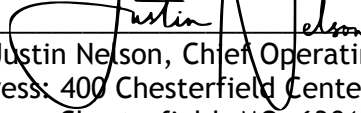
By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City and County Attorney

COMPANY

HYPERFIBER OF COLORADO, LLC,  
a Delaware limited liability company

By:  \_\_\_\_\_  
Justin Nelson, Chief Operating Officer  
Address: 400 Chesterfield Center  
Chesterfield, MO, 63017

## EXHIBIT A

THE COMPANY SHALL PROVIDE THE FOLLOWING SUPPLEMENTAL SITE LICENSE SIGNED INCLUDING A MAP OF THE AREA TO BE CONSIDERED FOR INSTALLATION OF EQUIPMENT AS MORE PARTICULARLY DESCRIBED IN THE MASTER LICENSE AGREEMENT. IN ADDITION TO THIS DOCUMENT, THE COMPANY SHALL SUBMIT THE THEN CURRENT FORM OF ROW PERMIT APPLICATION (CURRENTLY REFERRED TO AS A PUBLIC/PRIVATE IMPROVEMENT PERMIT).

### FORM OF SUPPLEMENTAL SITE LICENSE

THIS SUPPLEMENTAL SITE LICENSE is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“Effective Date”) between the City and County of Bromfield, Colorado, a Colorado home rule municipality and county (the “City”) and HyperFiber of Colorado, LLC, a Delaware limited liability company (“Company”) (collectively, the “Parties”).

1. Supplemental Site License. The City grants to the Company a non-exclusive, revocable Supplemental Site License to locate, construct, operate, control and maintain the Equipment, as contemplated and defined in that certain Master License Agreement For Fiber Optic Network in connection with the operation of the Company’s Network, between the City and the Company dated \_\_\_\_\_, 20\_\_\_, within the Public ROW (as defined in the Master License Agreement) segment shown in Exhibit 1, attached hereto and incorporated herein by this reference (“Equipment Location”). **[DRAFTING NOTE: EACH TIME A SUPPLEMENTAL LICENSE IS GRANTED THE NUMBER FOR THE NEXT EXHIBIT SHALL BE INCREASED BY 1 DIGIT (i.e. Exhibit 1, Exhibit 2, Exhibit 3 etc.), SO EACH SUPPLEMENTAL SITE LICENSE CAN BE MORE EASILY TRACKED]**
2. Term of Supplemental Site License. The term of this Supplemental Site License shall be as set forth in Section 3 of the Master License Agreement.
3. Equipment Location Acknowledgement. The Company and the City acknowledge and agree that the general placement of the Equipment in the locations identified on Exhibit 1 are feasible and the City believes there is room within the ROW indicated for the Equipment; however, the individual permits issued for the installation of the Equipment shall list the detail as required and detailed in the Master License Agreement.
4. Incorporation of Master License Agreement. All of the terms and conditions of the Master License Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master License Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Master License Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the Master License Agreement unless otherwise indicated herein.
5. Approvals. It is understood and agreed the Company’s ability to install its Equipment in the ROW is contingent upon its obtaining all of the appropriate certificates, permits and other approvals that may be required under Applicable Law.
6. Notice and Communications. All notices, requests, and demands to or upon any Party to this Supplemental Site License shall be in writing addressed to the person

designated in the Master License Agreement.

7. Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action related to this Agreement shall lie in the District Court, Broomfield County, Colorado.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

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City Engineer  
One DesCombes Drive  
Broomfield, CO 80020

APPROVED AS TO FORM:

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City and County Attorney's Office

COMPANY

HYPERFIBER OF COLORADO, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT 1**

**Supplemental Site License Location Map**

[To be attached with Supplemental Site License Application]

## EXHIBIT B

### INSURANCE REQUIREMENTS

#### **CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including Pollution Liability**

1. All insurers must be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers should have an A.M. Best Company rating of at least A- VII.
3. Additional Insured - City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Pollution Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage – Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver – All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits– The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/ Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates – Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
  - a. the effective date of the Contract
  - b. the expiration date of any coverage
  - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the following:

Insurance Requirements - Including Pollution Liability		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"> <li>Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability.</li> </ul> <p><b>Note:</b> For contracts involving vendor/contractor contact with minors or at risk adults Sexual Abuse and Misconduct Coverage should be included in the coverage requirements.</p>	<b>Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$5,000,000 Each Occurrence</li> <li>\$5,000,000 General Aggregate (Per project aggregate for construction contracts)</li> <li>\$5,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)</li> </ul>
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 each accident combined single limit.</li> <li>\$2,000,000 General Aggregate</li> <li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li> </ul>
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"> <li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li> </ul> <p><b>Note:</b> This requirement shall not apply when a contractor or subcontractor is exempt under the Colorado Workers' Compensation Act AND when such contractor or subcontractor provides an appropriate sole proprietor letter.</p>	<b>Employer's Liability with Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$100,000 Each Accident</li> <li>\$100,000 Each Employee by Disease</li> <li>\$500,000 Disease Aggregate</li> </ul>
4.	<b>Environmental Liability Insurance</b> <ul style="list-style-type: none"> <li>Contractor/Vendor will purchase an environmental liability policy covering bodily injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from contractor/vendors operations and completed operations.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Each Occurrence/Aggregate</li> </ul>
5.	<b>Excess or Umbrella Coverage</b> <ul style="list-style-type: none"> <li>Excess or Umbrella Liability insurance on an occurrence basis covering in excess of commercial general liability insurance, which has coverage as such policy.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$2,000,000 Each Occurrence/Aggregate</li> </ul>
<p><b>Additional Insured - The following shall be named an Additional Insured:</b> The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Pollution Liability, Umbrella Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.</p> <p><b>Certificate Holder is:</b>  City and County of Broomfield  One DesCombes Drive  Broomfield, CO 80020-2495  <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a></p>		

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to [RiskManagement@broomfield.org](mailto:RiskManagement@broomfield.org)





Proposed Resolution Intrepid Fiber Master License Agreement

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Consent Items Item: 6G
Presented By	
Katie Allen	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience <input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

Overview

[View Correspondence](#)

BIF IV Intrepid OPCO, LLC, D/B/D Intrepid Fiber Networks (Intrepid) is requesting a Master License Agreement to install fiber-to-home infrastructure within Broomfield rights-of-way.

Attachments

- [Intrepid License Agreement Council Memo.pdf](#)
- [Resolution 2024-99 Intrepid License Agreement.pdf](#)
- [Intrepid Master License Agreement for Fiber in the ROW - 2024 - Final For Signature.pdf](#)

## Summary

### [View Correspondence](#)

BIF IV Intrepid OPCO, LLC, D/B/D Intrepid Fiber Networks (Intrepid) is requesting a Master License Agreement to install fiber-to-home infrastructure within Broomfield rights-of-way.

Federal law and state law provide some guidance on the City's ability to regulate the services Intrepid desires to provide. In accordance with Section 253 of the Telecommunications Act of 1996, federal law requires that no state or local statute or regulation may prohibit or have the effect of prohibiting the ability of *any* entity to provide any interstate or intrastate telecommunications services. Moreover, Colorado state law, C.R.S. § 38-5.5-101 et seq, mirrors federal law and requires that access to rights-of-way and oversight of that access must be competitively neutral (i.e. the City can't favor or disfavor any particular provider) with respect to the City's regulations of companies in this area. The City still does retain the ability to use our police power to enforce our rules on the use of the right-of-way which are established in Chapter 14-10 of the Broomfield Municipal Code that has been in effect since 2000.

Further, City regulations under Section 14-10-060 (A) of the Broomfield Municipal Code require approval of the City Council to use and occupy Broomfield right-of-way. Chapter 14-10 of the Broomfield Municipal Code regulates the use of public rights-of-way by requiring private users who construct, excavate, and work in Broomfield's rights-of-way to obtain Broomfield's permission to do so. Chapter 14-10 provides for a permit application, insurance and indemnification by users, standards for repair and restoration, and fees and charges.

Broomfield has previously approved telecommunications infrastructure to be installed within the public rights-of-way. These previous installations were approved by Council through a revocable permit and the installations have included fiber backbone infrastructure and connections to specific facilities.

Recently, Broomfield has been approached by multiple new internet service providers who are interested in constructing fiber-to-home infrastructure to provide broadband services to residents and, in some cases, businesses within Broomfield. Fiber internet is typically faster than cable internet and would provide additional internet provider options for Broomfield residents and businesses within Broomfield. Under C.R.S. § 38-5.5-101 et seq telecommunications providers have the right to occupy and utilize the public rights-of-way and municipalities must provide equal access to rights-of-way for telecommunication providers.

The revocable permit form of agreement that was previously used and approved is not ideal for what is being proposed with fiber-to-home. In order to facilitate the orderly installation of fiber-to-home infrastructure, staff has created a standard Master License Agreement template for any entity desiring to construct such fiber facilities in Broomfield. Broomfield worked with Ken Fellman with Wilson Williams Fellman Dittman in Louisville because he has extensive experience in this field and has negotiated these types of agreements with other municipalities. Staff customized the agreement from Mr. Fellman to better fit Broomfield's exact needs. All of the master license agreements will be substantially similar and all providers will have equal access to the right-of-way, but staff will have the ability to limit or regulate facilities in areas where existing utilities already exist or where there is no more room for additional utilities in a corridor. In those instances, staff will assist providers with finding alternate (less crowded) routes to provide the services. The master license agreement may be terminated by the City if the provider materially breaches the agreement.

Intrepid currently intends to construct infrastructure within Broomfield approximately between US-36 and 144th Ave. This Master License Agreement approves phased installation throughout the City. The exact location and phasing of the improvements will be defined by future Site License Agreements, which incorporates all of the terms of the Master License Agreement and will include a map of the locations for the fiber facilities, that will be reviewed and approved by the City and County Engineer. Intrepid will be applying to Broomfield for permits to construct specific phases/areas. The Master License Agreement allows for additional fiber optic installations to be approved by the City and County Engineer should Intrepid decide to expand southwest of US-36 or north of 144th Ave.

The majority of the work will be performed using directional boring to avoid open trenching to protect Broomfield streets. A \$500 application fee will be submitted to Broomfield as required by Chapter 14-10. Applications will be submitted for Public/Private Improvement Permits for the work. An insurance certificate will be provided.

Broomfield IT staff remains focused on the design and construction of a secure, redundant internal network to serve Broomfield's assets including buildings, wastewater lift stations, water pump stations, and traffic signals. This Broomfield-owned communication network will also be the backbone for a variety of software and the Internet of Things (IoT) delivering connected solutions to City buildings and assets. Additionally, the design and build-out of the City's backbone infrastructure includes additional facilities intended to provide opportunities for future lease options with internet service providers to potentially provide a revenue stream to help offset the City's internal costs.

Broomfield will work with Intrepid to add extra conduit along several segments to be owned by Broomfield for future fiber optic cable installation in accordance with Broomfield's Fiber Infrastructure Master Plan in accordance with B.M.C. §14-10-120(F) and (G).

## Financial Considerations

BIF IV Intrepid OPCO, LLC, D/B/D Intrepid Fiber Networks (Intrepid) is required to pay Broomfield a \$500 application fee and applicable permit fees.

## Prior Council or Other Entity Actions

This is the first Master License Agreement for a company to install fiber-to-home infrastructure. The following Revocable permits for fiber installations were previously authorized by Council:

On October 24, 2000 Council approved Resolution No. [2000-245](#) for a Fiber Optics Revocable Permit for Metromedia Fiber Network Services, Inc.

On February 11, 2003 Council approved Resolution No. [2003-27](#) for a Fiber Optics Revocable Permit for Yipes Enterprise Services, Inc.

On April 23, 2013 Council approved Resolution No. [2013-34](#) for a Fiber Optics Revocable Permit for Zayo Group, LLC.

On June 11, 2013 Council approved Resolution No. [2013-77](#) for a Fiber Optics Revocable Permit for Unite Private Networks, LLC.

On November 18, 2014 Council approved Resolution No. [2014-182](#) for a Fiber Optics Revocable Permit for Teleport Communications America, LLC.

On February 23, 2016 Council approved Resolution No. [2016-23](#) for a Fiber Optics Revocable Permit for Level 3 Communications, LLC.

On December 12, 2017 Council approved Resolution No. [2017-211](#) for a Fiber Optics Revocable Permit for MCImetro Access Transmission Services (Verizon).

On May 21, 2019 Council approved Resolution No. [2019-113](#) for a Fiber Optics Revocable Permit for Adams 12 Five Star Schools.

## **Boards and Commissions Prior Actions and Recommendations**

N/A

## **Proposed Actions / Recommendations**

If Council desires to approve the Master License Agreement, the appropriate motion is...

**That Resolution 2024-99 be adopted.**

## **Alternatives**

Do not approve the agreement.

# RESOLUTION NO. 2024-99

A resolution approving a Master License Agreement by and between the City and County of Broomfield and BIF IV Intrepid OPCO, LLC

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

The Master License Agreement by and between the City and County of Broomfield and BIF IV Intrepid OPCO, LLC, D/B/D Intrepid Fiber Networks to use rights-of-way for fiber optic services is hereby approved.

## Section 2.

The Mayor or Mayor Pro Tem is authorized to sign and the City and County Clerk is authorized to attest the Master License Agreement, in form approved by the City and County Attorney.

## Section 3.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

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City and County Attorney

**MASTER LICENSE AGREEMENT FOR FIBER OPTIC NETWORK BY AND BETWEEN THE CITY AND COUNTY OF AND BIF IV INTREPID OPCO, LLC, D/B/A INTREPID FIBER NETWORKS**

This Master License Agreement (this “Agreement”), dated as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (the “Effective Date”), is entered into by and between the City and County of Broomfield, a Colorado home rule municipality and county (the “City”), and BIF IV Intrepid OpCo, LLC, a Delaware limited liability company d/b/a Intrepid Fiber Networks (the “Company”), each a “Party”, and collectively, the “Parties”.

**RECITALS**

A. The City holds good and valid title to the Public Rights-of-Way (“ROW”), as defined in Section 1.7 below, throughout the City and desires to protect and preserve the ROW. The City further maintains police power authority to regulate access to and use of the ROW in a manner that protects the public health, safety, and welfare, consistent with Applicable Law.

B. The Company is in the business of providing Services to its customers through fiber-based telecommunications and broadband networks, including the Network (as defined in Section 1.6 below) to be installed in the City, in accordance with regulations promulgated by the Federal Communications Commission (“FCC”) and pursuant to this Agreement.

C. For purposes of operating the Network, the Company wishes to locate, place, attach, install, operate, control, and maintain Equipment, as defined in Section 1.4 below, in the Public Rights-of-Way in the locations detailed in Supplemental Sites Licenses, a sample of which is attached hereto as Exhibit A.

D. The City desires to grant to the Company a non-exclusive license (“License”) for the above-stated purpose, upon the terms and conditions contained below, and in accordance with Applicable Law.

**AGREEMENT**

In consideration of the mutual covenants and promises of the Parties contained herein, and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the City hereby grants to the Company, with respect to such interest as the City may have in the ROW, the authorization to install, construct, operate, maintain, repair, inspect, remove and replace the Equipment in, under, or along the ROW, subject to the following conditions:

1. **Definitions.** The following definitions shall apply generally to the provisions of this Agreement:
  - 1.1. **“Applicable Law”** means any statute, ordinance, judicial decision, order (including, without limitation, FCC orders), executive order or regulation having the force and effect of law that determines the legal standing of a case or issue.
  - 1.2. **“Claims”** means (1) losses, liabilities, costs and expenses of any sort, including reasonable attorneys’ fees; (2) fines and penalties; (3)

environmental costs, including, but not limited to, investigation, removal, remedial, and restoration costs, and consultant and other reasonable fees and expenses; and (4) any and all other reasonably related costs or expenses.

- 1.3. **“Equipment”** means electronics equipment, transmission equipment, shelters, conduit, coaxial cables, mounts, generators, containment structures, hangers, pull boxes, conduit, pedestals, brackets, fiber optic cable and other accessories and component equipment related to the operation of the Company’s Network.
- 1.4. **“Hazardous Substance”** means any substance or material defined or designated, or other similar term by any Applicable Law presently in effect or promulgated in the future, as such laws, regulations or rules may be amended from time to time; and it shall be interpreted to include without limitation any substance which after release into the environment will or may reasonably be anticipated to cause sickness, death or disease.
- 1.5. **“Network”** or collectively **“Networks”** means one or more of the neutral-host, broadband communication or telecommunication systems operated by the Company to serve its customers in the City.
- 1.6. **“Public Rights-of-Way,” “Public ROW” or “ROW”** means the space in, upon, above, along, across, and below the public streets, roads, highways, lanes, courts, ways, alleys, boulevards, sidewalks and bicycle lanes as the same now or may hereafter exist, that are under the jurisdiction of the City. This term shall not include City parkland, trails, state or federal rights-of-way, or any property owned by any person or entity other than the City, except as provided by Applicable Law or pursuant to an agreement between the City and any such person or entity.
- 1.7. **“Services”** means the telecommunications or broadband services provided through the Network by the Company to its customers. Services also includes the lease of the Network, or any portion thereof, to another person or entity, or the provision of capacity or bandwidth on the Network to another person or entity, provided that the Company at all times retains exclusive control over the Network and remains responsible for locating, servicing, repairing, relocating, or removing its Network pursuant to the terms of this Agreement.
- 1.8. **“Standards”** means the current version of the Broomfield Standards and Specifications.
2. **Term.** This Agreement shall be effective as of the Effective Date and shall extend for a term of ten (10) years from the date it has been executed by both Parties, unless it is earlier terminated by either Party in accordance with the provisions herein. Provided, however, that if the Company’s Network is not operational and providing Services to customers within the City within two (2) years of the Effective Date of this Agreement, this Agreement may be terminated by the City, in its sole discretion, upon ninety (90) days written notice. This Agreement will be automatically extended for an additional term

of ten (10) years from the expiration date of the current term, unless either Party notifies the other in writing of its desire to not exercise this automatic extension (and enter renewal negotiations) at least three (3) years before the expiration of this Agreement. Notwithstanding the expiration of this Agreement, and so as long as the Parties are negotiating in good faith, and until such time as either a new agreement has been reached or the City has determined not to renew this Agreement, the Company shall have the right to continue to occupy and use the ROW pursuant to the terms of this Agreement.

3. **Scope of Agreement.** All rights expressly granted to the Company under this Agreement, which shall be exercised at the Company's sole cost and expense, shall be subject to Applicable Law. All rights expressly granted to the Company under this Agreement shall be subject to the City's lawful exercise of its police powers and the prior and continuing right of the City under Applicable Law to use any parts of the Public ROW, exclusively or concurrently with any other person or entity and shall be further subject to all deeds, easements, dedications, conditions, covenants, restrictions, leases, licenses, permits, franchises, encumbrances, and claims of title of record which may affect the Public ROW. Except with respect to the License granted herein, nothing in this Agreement shall be deemed to grant convey, create, or vest in the Company a real property interest in land, including any fee, leasehold interest, or easement. Any work performed pursuant to the rights granted under this Agreement shall be subject to, and conform with, Applicable Law. Nothing in this Agreement shall be deemed to grant a franchise, nor permit the City to collect a franchise fee. This Agreement does not grant any authority to utilize the Public ROW to construct a cable system, provide cable or other video programming services, construct a wireless communications facility, deploy wireless communications facilities in the ROW, or provide wireless communications services. The Company acknowledges that the City has made no warranties or representations regarding the fitness or suitability of any ROW for the installation or operation of the Equipment and the Company shall accept the Property AS IS. Any performance of work or costs incurred by the Company contemplated under this Agreement is at the Company's sole risk. The Company understands there is risk involved in placing the Equipment within the Public ROW and hereby releases the City, and its agents and employees, from any liability for any damage to the Equipment that may be caused by the City's construction or maintenance operations, or any other reason, and from any liability for any injury or damage incurred by the Company in its use of the Equipment within the Public ROW.

- 3.1. **City Use.** The Company acknowledges and agrees that the City currently uses and intends to continue to use the ROW for road purposes, and the rights granted to the Company for use of the ROW are subject to the rights of the City to use the property for a public road, sidewalk, shoulder, snow or material storage, drainage, water, wastewater, network, and other utilities or such other purposes as permitted by law which the City expressly reserves. In the event the City desires use of the ROW where the Equipment exists for future improvement projects, the City shall be under no obligation to pay to the Company any damages for removal or relocation of the Equipment and the Company shall relocate or remove such Equipment in accordance with the terms of this Agreement as more particularly set forth below.



4. **Construction.** The Company intends to install its Network at the locations to be approved by the City and submitted as a request for Supplemental Site License. The Company shall be required to obtain a Supplemental Site License and any permits required from the City for the installation of the Equipment (currently referred to as a Public/Private Improvement Permit (PPIP)) for each Equipment location or to perform any excavation or other work in the Public ROW in connection with its Network deployment. The Company shall use the form attached as Exhibit A prior to beginning construction in conjunction with the City's standard application for work within the ROW for the initial construction. The City will authorize the Company to commence construction with the grant of a Supplemental Site License and the provision of all necessary permits for the work within the ROW. The City's granting or approval applicable to such licenses and permits shall not be unreasonably, withheld, conditioned, or delayed. Supplemental Site Licenses shall be approved administratively by staff and signed by the City Engineer. The intent of the Parties is that the Supplement Site License will show a larger area of where the Equipment is anticipated to be installed generally, with the individual permits for ROW construction providing more detail as to the exact location and manner of construction. Pursuant to the Standards, any person performing work that requires a permit shall obtain a Contractor's License as set forth in Broomfield Municipal Code Chapter 15.32. If the Company's construction requires any deviation in any manner from the approved plans, the Company shall notify and obtain prior written approval from the City for any changes in advance of any construction or alteration. The Company shall pay for and repair, at its sole expense, any damage to existing facilities located on the Public ROW, whether owned by the City or others, that occurs as a result of the Company's construction or alteration of the Equipment.
- 4.1. **Obtaining Required Permits.** If the attachment, installation, operation, maintenance, or location of the Equipment meets any of the criteria for a permit per the Standards, the Company shall apply for the appropriate permits and pay any standard and customary permit fees. The City shall respond to the Company's requests for permits in the ordinary course of its business and shall otherwise cooperate with the Company in facilitating the deployment of the Network in the Public ROW in a reasonable and timely manner, provided that, the City may withhold a permit if the Company has outstanding permits that are not diligently being completed in the sole and absolute discretion of the City, or the City does not have adequate staffing to manage the permit requests currently in process with the City. As a condition of obtaining any permit that involves digging or other excavation in the Public ROW, the Company shall comply with all documents and processes set forth in the Standards and at a minimum, as part of its permit application submittal materials, identify on its fiber plan and profile set the following information:
  - 4.1.1. All pothole and boring locations, the boring and installation method for its Equipment, number and size of conduits, cover depth of conduit, dimension clearance from the proposed conduit and existing utilities.
  - 4.1.2. The horizontal and vertical locations of any other existing

underground utility or other facilities in the Public ROW in the proximity of the proposed work area, in accordance with state laws for subsurface utility engineering and any additional City requirements, and what work will be self-performed and what work, if any, will be performed by subcontractors.

- 4.1.3. For each permit request, the Company shall provide construction drawings for review by the City, that identifies all existing and proposed utilities, identifies the location of all Equipment to be installed (including the equipment shelters, cables, conduit, pull boxes, pedestals, fiber runs, point of demarcation, electrical distribution panel, electric meter, electrical conduit and cabling, and all other associated equipment), ROW limits, existing or proposed easements, existing trees, fences, and other above ground improvements, traffic control signs and equipment, any other existing improvements, where the installation will occur (back of sidewalk, in the paved surface of the roadway), a profile with potholed locations of existing utility crossings (including fiber, water, sanitary sewer, and stormwater lines), a plan for conducting emergency repairs and all anticipated, expected restoration work. Where applicable, the design documents shall include specifications on design and ADA compliance.
- 4.1.4. If revisions to the construction drawings are required by the City, the Company shall provide revised drawings for review until final approval. The Company shall then include the final construction drawings with the appropriate permit application. The Company shall be allowed to seek permits year-round and all permits will expire as defined by the Standards. All work associated with a permit must be completed, including all restoration of pavement, sidewalks, landscaping, and other items, before a permit can be closed.
- 4.1.5. Plans shall show the Company's drawings of Equipment as compiled in accordance with the City's current practices and procedures as they are in effect from time to time, as well as any information required by Applicable Law.
- 4.1.6. "As-Built" drawings and design files with respect to the Equipment will be provided to the City as provided in the Record Drawings Section of Standards.
- 4.2. **Obtaining Required Permits Using Shallow/Micro Trenching.** The City currently does not have separate standards and specifications for the installation of Equipment using shallow, or micro, trenching techniques. As a result, in addition to the applicable requirements set forth Section 4.1, the following standards shall apply for all shallow, or micro, trenching work within the City.
  - 4.2.1. NOT APPLICABLE
- 4.3. **Location of Equipment.** Potholes, analysis of as-built drawings, or

investigation of existing utility infrastructure must be performed so any conflicts with existing utilities (including fiber, water, sanitary sewer, and stormwater lines) are to be shown in the profile view of the drawings to be approved by the City. Prior to construction on each permit, the Company and its contractors must physically identify the locations of existing underground utilities within the path of construction via potholing. Potholes must be filled according to the current Standards. GIS data on the utilities and pipe material, if it can be visually identified, shall be updated on the engineering plans and as-built drawings. In relation to other utilities, all Equipment shall be placed according to the Standards. All Equipment shall be placed underground or, if approved by the City, via attachment to existing utility poles in compliance with the pole owner process for attachment. Any Equipment proposed to be located above ground must be screened in the manner approved by the City and the approval of the entity responsible for the maintenance of the property on which the Equipment is located.

- 4.4. **Obtaining Required Permits for Maintenance and Repair Work.** The Company, at its sole cost and expense, shall maintain the Equipment and every part thereof in good condition and repair, and perform any necessary maintenance functions. Any damage to the Equipment shall be repaired in a timely manner, but in no event later than 30 calendar days after a written request for such repairs from the City. The same process as described in Section 4.1 and 4.2, as applicable, shall be followed for work within the Public ROW relating to the repair or maintenance of the Network after installation; provided, that, a new Supplemental Site License will not be required after the initial installation of the Equipment, but any other necessary permits and performance guarantees for the performance of the work shall be secured as provided herein or in the Standards.
- 4.5. **Fees.** The Company shall apply for the appropriate permits and pay any standard and customary permit fees. In the event that the staffing levels are not sufficient to process Supplement Site Licensee and/or related permits for work in the ROW, whether due to City staffing levels or the number of permits being requested within the City, the City may notify the Company of its ability to add additional staffing capacity through the use of third party contractors. In such an event, the City shall notify the Company of the option to use third party contractors, and in such event the Company desires to pay the additional cost of third party consultants for the Supplement Site License and permit review and inspection work, the Company shall agree to pay the City any costs that the City incurs for such third party review, plus a 5% administrative review fee, less the applicable fees collected pursuant to the City's permit fee schedule had the work been performed by City staff. In such event, the Company shall reimburse the City for all costs and expenses associated with the third party review activities. The City shall provide invoicing to the Company documenting such costs which shall be due and payable within 21 calendar days of receipt to the City. The City will in turn use such funds to pay the third party consultants upon receipt. The purpose of this provision is to allow the City to

recover its actual costs for plan review, engineering and surveying review, and for construction observation, inspection and materials testing. If the Company elects not to pay for the additional costs, the City shall review the Supplement Site License and necessary permits in the ordinary course of business and shall not charge any additional fees, but the Company acknowledges that time for review may be extended in such an event which is not unreasonable.

- 4.6. **Public Infrastructure Security.** In accordance with the Standard's performance guarantee requirements, the Company shall provide financial security, in the form of letter of credit (in a form approved by the City) or cash deposit, for the cost to repair or reconstruct all public infrastructure anticipated to be required with any Supplemental Site License or ROW permit and the cost of any third-party contractors (as described in Section 4.5 above) engaged by the City in conjunction with the services provided herein. Rather than complete a new performance guarantee for each permit issued, the City and the Company may mutually agree upon an amount of a performance guarantee sufficient to cover the costs of the work anticipated to occur within the City for one calendar year. The Company shall provide such security in the approved form and amount prior to issuance of any required construction permit. When all required repairs or reconstruction of public infrastructure have been completed in accordance with City Standards, the City shall release the performance guarantee back to the Company in accordance with the Standards.

- 4.6.1. **Warranty.** The Company, or its contractor, shall warranty any work in the ROW for possible replacement or repairs for a period of two (2) years after completion of the work under a ROW permit. The performance guarantee shall remain in place even upon the completion of the work if additional permits are issued or anticipated to be issued. Only when no additional permits are outstanding and no additional work is contemplated by the Parties shall the performance guarantee be reduced as set forth in the Standards.

- 4.7. **Utility Notification Center.** The Company shall contact the Utility Notification Center of Colorado, <https://www.colorado811.org/>, for location of any underground utilities, and locate the Equipment as required. The Company shall use commercially reasonable efforts to coordinate with the City and any affected utilities to undertake locations in accordance with the policies of each entity.

- 4.8. **Damages to Other Utilities.** To the extent that Company or any of its contractors cause damage to other utility facilities (including network, water, sanitary sewer, and stormwater lines), if there is damage caused to any major facility, at the discretion of the City, all construction within the City shall cease in order to allow the affected utilities to have the damage repaired. Any contractor of the Company that causes damage to another utility's facilities may be forbidden by the City from doing any further work under this Agreement. Should a stop work order be issued as a result of any damage caused by the Company or any of its contractors, such stop work order may not be lifted until such time as

all damaged parties have been fully compensated for their actual damages incurred. See also Damages and Restoration below.

- 4.9. **Public Engagement.** Prior to beginning any work to install, maintain or repair its Network in the Public ROW, the Company shall first notify residents of the work (via door hangers) a minimum of 48 hours in advance of performing the work and the language on the door hangers must be approved by the City all as set forth in the Interruption of Services Section of the Standards.
- 4.10. **General Warranty.** The Company warrants that all Equipment installed by it shall be in accordance with: (a) generally accepted professional practices and the level of competency presently maintained by others in the same or similar type of work, and in compliance with the City municipal code and any regulations promulgated thereunder (“City Regulations”); (b) the plans and specifications provided by the Company to the City and approved by the City (the “Plans”); and (c) the same standards that the Company applies to construction of its own facilities (collectively referred to as the “Construction Standards”). The Company further warrants that the Equipment shall be free from obstructions and otherwise fully comply with the Construction Standards.
- 4.11. **Non-Liability.** The Company acknowledges that the City’s review and approval of the Plans for the Equipment is done in furtherance of the general public health, safety, and welfare and that no specific relationship with, or duty of care to the Company or third parties is assumed by such review approval.
5. **Relocation of Equipment.** The Company understands and acknowledges that City may require the Company to relocate one or more of its Equipment installations horizontally or vertically. The Company shall at City’s direction relocate such Equipment, at the Company’s sole cost and expense, not later than ninety (90) days (except in the case of an emergency) after receiving written notice that the City determines that the relocation is needed. In any such case, the City shall use its best efforts (but shall not be required to incur financial costs) to afford the Company a reasonably equivalent alternate location. If the Company shall fail to relocate any Equipment as requested by the City within a reasonable time from the date of the notification, but in no event later than three working days prior to the date the City has notified the Company that it, or another public agency or special district intends to commence its work, or, in the case of emergencies, immediately, the City or its agent, public agency or special district completing the work, shall be entitled to relocate the Equipment at the Company’s sole cost and expense, without further notice to the Company and may invoice the Company for such expenses which shall be paid promptly by the Company.
6. **Modification of Supplement Site License Prior to Installation.** In the event that (i) any of the Supplemental Site License applications has been rejected; (ii) any governmental approval issued to Company is canceled, expires, lapses, or is otherwise withdrawn or terminated by a governmental authority; or (iii) the Company determines the Equipment Location is no longer technically compatible or financially feasible for its use, the Company shall have the right to terminate all or part of a Supplemental Site License prior to installation of

any Equipment. Notice of the Company's exercise of its right to terminate shall be given to the City in writing as set forth in this Agreement, and shall be effective upon the dates set forth in the notice. All standard and customary permit fees paid to said termination date shall be retained by the City. Upon such termination, all or part of the Supplemental Site License, as applicable, shall be of no further force or effect except to the extent of the obligations set forth in this Agreement. The Parties may mutually agree to modify any Supplemental Site License Agreements as needed to reflect any modifications.

**7. Termination; Default; Removal and Abandonment of Equipment.**

**7.1. Termination; Default.** At any time, the Company may elect to terminate this entire Agreement or may elect to discontinue the use of only portions of the Equipment. The City shall have the right to terminate all or a portion of this Agreement for failure of the Company in the performance of any covenant or condition in this Agreement within 30 days after receipt from the City of written notice of such breach; provided, however, if the nature of the remedy reasonably requires more than 30 days to cure, the Company shall not be in default if the Company commences such remedy within such 30-day period and thereafter diligently pursues such remedy to completion.

**7.2. Notification of Discontinue Use.** If at any time the Company intends to terminate this Agreement or discontinue use of any or all Equipment, it shall notify the City in writing of the intent to discontinue use. Such notice (the "Discontinuance Notice") shall describe the Equipment for which the use is to be discontinued, a date of discontinuance of use, which date shall not be less than sixty (60) days from the date such notice is submitted to the City and the Company's intended method of removal and restoration. The methods of removal or restoration shall include the following options (as more specifically described below):

7.2.1. Removal of the Equipment from the ROW; or

7.2.2. Abandonment of the Equipment in Place.

**7.3. City's Election Upon Receipt of Discontinuance Notice.** Upon receipt of a Discontinuance Notice, the City shall have sixty calendar days (the "City's Election Period") to notify the Company of its election with respect to the discontinued Equipment (the "City's Election"). The City may elect to allow the Company to: i) require removal of the Equipment from the ROW, in its sole discretion as more particularly described below, ii) convey the Equipment to the City as described below, or iii) abandon the Equipment in place. If no election is made by the City, the Company may abandon the Equipment in place and the Equipment shall remain under the ownership of the Company. In any event, upon termination or discontinuance of use, the Company shall be required to remove at its sole cost and expense any above ground structures with foundations from the ROW upon termination of this Agreement, regardless of the election made by the City hereunder. For purposes of clarity, above ground structures with foundations does not include the removal of pull boxes or other equipment that is flush with ground level. The City shall be reimbursed by the Company for all removal costs

and expenses including administration costs to remove the above ground structures with foundations, if the Company fails to remove the same.

- 7.4. **Removal of Equipment by the Company.** The Company may not remove, destroy, or permanently disable any such Equipment until the Company has obtained the necessary permits from the City for the removal of the Equipment from the Public ROW. If the City elects for the Equipment to be removed, the Company shall obtain a permit for such removal within 60 days of the receipt of the City's Election. Once the necessary permits have been issued by the City (including receipt by the City of any performance guarantee), the Company shall remove and dispose of such Equipment and restore any property damaged by such removal, and shall complete such removal, disposal, and restoration in accordance with the terms and within the time set forth in the permit, unless additional time is requested from and approved by the City. If Company fails to complete this removal and restoration work in accordance with the approved permit, then the City, upon written notice to the Company, shall have the right at the City's sole election, but not the obligation, to perform the removal or restoration work and charge the Company for the actual costs and expenses, including, without limitation, reasonable administrative costs. The Company shall pay to the City actual costs and expenses incurred by the City in performing the work to the extent not covered by the performance guarantee received with the permit. If the City does not remove such items at the City's cost after the Company's failure to so remove, any items of the Company's property remaining on or about the Public ROW may, at the City's option, be deemed abandoned and the City may dispose of such property in any manner permitted by Applicable Law.

- 7.4.1. If Company does not take any action to remove its Equipment pursuant to Section 7.4 or fails to affirmatively abandon or remove its Equipment within six (6) month of the City's Election notice, then the City may, in its sole discretion, notify the Company that the Company will be deemed to have remised, released, quitclaimed, and sold to the City all title and ownership in any Equipment remaining in the Public ROW, and the permanent abandonment in place and transfer of ownership of that Equipment shall automatically vest in the City without necessity of an additional agreement or instruments of conveyance.

- 7.5. **Conveyance of Equipment to the City.** At the discretion of the City, and upon written notice of the City's Election during the City's Election Period described above, the Company may abandon the Equipment in place, and shall further convey full title and ownership of such abandoned Equipment to City in a form acceptable to City. If the City agrees to accept ownership, the Company shall execute and deliver to the City bills of sale in a format acceptable to the City, and such other documents as the City deems necessary to effectuate such transfer of ownership to the City within thirty (30) days of the City's written notice of its intent to accept the transfer. The consideration for the conveyance is the City's permission to abandon the Equipment in place.

The Company shall be responsible for all obligations as owner of the Equipment, or other liabilities associated therewith, until the conveyance is completed. Once the conveyance is completed, the City shall be the owner and responsible for the Equipment.

- 7.6. **Abandonment of Equipment in Place.** At the discretion and upon written notice of City Election, the Company may abandon the Equipment in place, but the Company still retains the responsibility for all obligations as owner of the Equipment, or other liabilities associated therewith. The Company acknowledges and agrees that any Equipment that is abandoned in place may, at a later date, be removed by the City, another public agency or special district, if such party is doing work within the ROW that requires removal of the Equipment, all without further notice to the Company.
- 7.7. **Survival.** The provisions of this Section 7 shall survive the expiration or earlier termination of this Agreement.
8. **Damage and Restoration.** Unless otherwise provided by Applicable Law, whenever the installation, removal, or relocation of any Equipment is required or permitted under this Agreement, and such installation, removal, or relocation shall cause the Public ROW or any City or other public or private property to be damaged, or whenever the Company, in connection with any of its operations, causes damage to the ROW or any other public or private property, the Company, at its sole cost and expense, shall repair or cause to be repaired, the damage and return the ROW or other property in which the Equipment is located and all affected property to a safe and satisfactory condition. Any repairs or restoration, including emergency work, shall be completed as set forth in the Standards.
9. **Other Utilities, Other Service Providers.**
  - 9.1. The Company agrees and understands that if the City has permitted or allowed natural gas gathering, storage, transmission, distribution, or related facilities within the ROW, the Company has been fully advised by the City that such natural gas facilities may now transport and may continue to transport natural gas at significant pressures. The Company shall advise all employees, agents, contractors, and other persons who enter upon the Public ROW the existence and nature of such natural gas facilities and the potential danger and risk involved.
  - 9.2. The Company agrees and understands that any natural gas facilities, if located within the ROW, may be subject to cathodic protection by rectifier and related anode beds, and that City shall not be liable for stray current or interfering signals induced in the Equipment as a result of the operating of the cathodic protection system.
  - 9.3. The Company agrees and understands that if the City has permitted and allowed to be constructed electric transmission, distribution, or related facilities within the ROW, the Company has been fully advised by the City that such electric facilities may now transmit and may continue to transmit electric current at significant voltages, and that the conductors on electric lines may not be insulated. The Company shall advise all of



its employees, agents, contractors, and other persons who enter upon the Public ROW of the existence and nature of such electric facilities and the potential danger and risk involved.

10. **Hazardous Substances.** The Company agrees that the Company, its contractors, subcontractors, and agents, will not use, generate, store, produce, transport or dispose of any Hazardous Substance on, under, about or within the area of the ROW or adjacent property in violation of any Applicable Law. Except to the extent of the negligence or intentional misconduct of the City, the Company shall pay, indemnify, defend, and hold the City harmless against and to the extent of any loss or liability incurred by reason of any Hazardous Substance produced, disposed of, or used by the Company pursuant to this Agreement. The Company shall ensure that any on-site or off-site storage, treatment, transportation, disposal, or other handling of any Hazardous Substance will be performed by persons who are properly trained, authorized, licensed and otherwise permitted to perform those services. The Parties recognize that the Company is only using a small portion of the ROW and that the Company shall not be responsible for any environmental condition or issue except to the extent resulting from the Company's, its agents' or contractors' specific activities and responsibilities under this Agreement.
11. **Indemnification.** The Company shall indemnify, defend, and hold the City, its employees, officers, elected officials, agents, and contractors (the "Indemnified Parties") harmless from and against all injury, loss, damage, or liability (or any Claims in respect of the foregoing), costs or expenses arising from the installation, use, maintenance, repair or removal of the Network and any Equipment, or the Company's breach of any provision of this Agreement. The Company's indemnification obligations extend to any Claims asserted by and any person or entity, including, but not limited to, employees of Company or its contractors, subcontractors, or their employees; and any Claims arising from, or alleged to be arising in any way from, the acts or omissions of Company, its sublessees, invitees, agents, or employees.
  - 11.1. The City shall give the Company timely written notice of the making of any Claim or of the commencement of any action, suit, or other proceeding in connection with any Claim. In the event such Claim arises, the City shall tender the defense thereof to the Company and the Company shall reasonably consult and reasonably cooperate with the City and County Attorney's Office while conducting its defense. The City and the Indemnified Party shall cooperate fully therein with the Company's legal representative and shall be consulted on any settlements of claims prior to the execution of any settlement agreements.
  - 11.2. If separate representation to fully protect the interests of both Parties is or becomes necessary, such as a conflict of interest between the Indemnified Party and the counsel selected by the Company to represent the City, the Company shall pay for all reasonable expenses incurred by the City as a result of such separate representation; provided, however, in the event separate representation becomes necessary, the City shall select its own counsel and any other experts or consultants, subject to the Company's prior approval, which shall not be unreasonably withheld. The City's expenses hereunder shall include all

reasonable out-of-pocket expenses, such as consultants' fees.

12. **Insurance.** To assure the City that the Company is always capable of fulfilling specified indemnification obligations, the Company, and its contractors and subcontractors, shall purchase and maintain insurance of the kind and in the amounts required by the City, from an insurer with an AM Best FSR rating of A- or higher as more particularly set forth on Exhibit B. The insurance requirements set forth in Exhibit B may be updated without an amendment to this Agreement with each renewal, automatic or otherwise, of this Agreement. However, proof of insurance attached as Exhibit B shall not be deemed to limit or define obligations of the Company as provided elsewhere in this Agreement, and the Company should rely on its expertise to obtain additional insurance coverage needed for the City and the Company in its performance hereunder.
  13. **Governmental Immunity.** The City and its officers, attorneys and employees are relying on, and do not waive or intend to waive by any provision of this Master License Agreement or any Supplemental Site License, immunities, limitations, coverages, or protections of the Colorado Governmental Immunity Act, C.R.S. §§ 24-10-101, *et seq.*, as a result of entering into this Agreement.
  14. **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if sent by email to the authorized representative identified below. Such notice shall be deemed to have been given when the email was sent and received. Either Party may change its representative at any time by notice to the other Party. The Parties each designate an authorized representative as follows:
    - 14.1. **City Representative.** The City designates the City Engineer as the authorized representative of the City under this Agreement. Email address is [engineeringpermits@broomfield.org](mailto:engineeringpermits@broomfield.org).
    - 14.2. **Company Representative.** The Company designates Jeffrey Polachek as the authorized representative of the Contractor under this Agreement. Email address is [jeff.polachek@intrepidfiber.com](mailto:jeff.polachek@intrepidfiber.com).

If the Company is alleging that the City is in breach of this Agreement or has violated any term of this Agreement, Legal Notice shall be made by making the notice above with a copy to [citycountyattorney@broomfield.org](mailto:citycountyattorney@broomfield.org).

  - 14.3. **Emergency Contact.** The Company shall make certain that it has a designated contact person available 24/7 in the event of an emergency requiring the City to take immediate action. The Company's 24/7 call center number is: (844) 380-8090.
15. **Miscellaneous Provisions.** The provisions that follow shall apply generally to the obligations of the parties under this Agreement.
  - 15.1. **Documentation.** A Company representative shall have one copy of the applicable rights of way permit issued for work authorized under any Supplemental Site License in the Public ROW and available during construction or maintenance of any Equipment.
  - 15.2. **Non-Exclusive Use.** The Parties understand and agree that the City

permits other persons and entities to install utility facilities in the ROW. In permitting such work to be done by others, the City shall not be liable to the Company for any damage caused by those persons or entities.

- 15.3. **Compliance with Laws.** The Company shall be cognizant of all federal and state laws and local ordinances and regulations that in any manner affect those engaged or employed in the work or which in any manner affect the conduct of the work under this Agreement, and of all such orders and decrees of bodies or tribunals having any jurisdiction or authority over the same, and shall at all times observe and comply with all such existing laws, ordinances, regulations and decrees, and shall protect and indemnify the City against any claim or liability arising from or based on the violations of any such law, ordinance, regulation, order or decree, whether by itself, its subcontractors, agents or employees.
- 15.4. **Severability of Provisions.** If any provision of this Agreement is invalid or unenforceable with respect to any Party, the remainder of this Agreement or the application of such provision to persons other than those as to whom it is held invalid or unenforceable, shall not be affected and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 15.5. **No Waiver.** A Party shall not be excused from complying with any of the terms and conditions of this Agreement by any failure of a Party upon any one or more occasions to insist upon or to seek compliance with any such terms or conditions. Both the City and the Company expressly reserve all rights they may have under Applicable Law to the maximum extent possible, and neither the City nor the Company shall be deemed to have waived any rights they may now have or may acquire in the future by entering into this Agreement, except when done so in writing by a Party's authorized representative.
- 15.6. **Federal and State Authorizations.** The Company has obtained all government licenses, permits and authorizations from the Federal Communications Commission which are required in order to provide the Services.
- 15.7. **Governing Law; Jurisdiction.** This Agreement shall be governed and construed by and in accordance with the laws of the State of Colorado. Venue for any proceeding arising out of this Agreement shall be in the District Court, Broomfield County, Colorado.
- 15.8. **Force Majeure.** With respect to any provisions of this Agreement, the violation or noncompliance of any term of this Agreement which could result in the imposition of a financial penalty, damages, forfeiture or other sanction upon a party, such violation or noncompliance shall be excused where such violation or noncompliance is the result of acts of God, war, civil disturbance, strike or other labor unrest, pandemics, or other events, the occurrence of which was not reasonably foreseeable by such Party and is beyond such party's reasonable control, and which was not caused and could not have been avoided by a party which used its best efforts in its operations to avoid such results. If a Party believes

that a reason beyond its control has prevented or delayed its compliance with the terms of this Agreement, it shall provide documentation as reasonably required by the other Party to substantiate its claim. If that Party has not yet cured the deficiency, it shall also provide the other Party with its proposed plan for remediation, including the timing for such cure.

- 15.9. **Limitation of Liability.** Except for indemnification pursuant to Section 11, neither Party shall be liable to the other, or any of their respective agents, representatives, employees for any lost revenue, lost profits, loss of technology, rights or services, incidental, punitive, indirect, special or consequential damages, loss of data, or interruption or loss of use of service, even if advised of the possibility of such damages, whether under theory of contract, tort (including negligence), strict liability or otherwise.
- 15.10. **Representations and Warranties.** Each of the Parties to this Agreement represents and warrants that it has the full right, power, legal capacity, and authority to enter into and perform the Parties' respective obligations hereunder and that such obligations shall be binding upon such party without the requirement of the approval or consent of any other person or entity in connection herewith.
- 15.11. **No Third-Party Beneficiaries.** This Agreement benefits only the parties hereto and their successors and permitted assigns. There are no third-party beneficiaries.
- 15.12. **Public Disclosure.** The Company acknowledges that this Agreement is public record within the meaning of the Colorado Open Records Act, §24-72-202(6), C.R.S., and accordingly may be disclosed to the public.
- 15.13. **Officials Not To Benefit.** No elected or employed member of City government shall directly or indirectly be paid or receive any share or part of this Agreement or any benefit that may arise therefrom other than being provided the Services of the Company as any other customer of the Company.
- 15.14. **Co-Builds and Use of Conduit by the City.** Should the City desire to place its own facilities for City purposes in trenches or bores opened by the Company, the Company shall cooperate with the City in any construction by the permittee that involves trenching or boring in accordance with Broomfield Municipal Code §14-10-120 (F) and (G).
- 15.15. **Assignment.** This Agreement shall not be assigned by either Party without the prior written consent of the other Party.
- 15.16. **Amendment.** This Agreement may not be amended except pursuant to a written instrument signed by both Parties. The City and County Manager has the authority to enter into amendments to this Agreement, in addition to the areas herein specifically delegated to the City Engineer by this Agreement.
- 15.17. **Entire Agreement.** This Agreement contains the entire understanding between the Parties with respect to the subject matter herein. There

are no representations, agreements, or understandings (whether oral or written) between or among the Parties relating to the subject matter of this Agreement which are not fully expressed herein. Any prior oral or written agreements or licenses between the Parties concerning use of the Public ROW is superseded by this Agreement.

- 15.18. **Execution; Electronic Signatures.** This Agreement may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same instrument. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement. The Parties approve the use of electronic signatures for execution of this Agreement.

*[The remainder of this page is intentionally left blank.]*

This Agreement is executed by the Parties hereto in their respective names as of \_\_\_\_\_, 2024.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

\_\_\_\_\_  
Mayor  
One DesCombes Drive  
Broomfield, CO 80020

ATTEST:

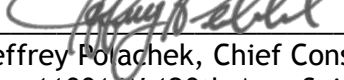
By: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

By: \_\_\_\_\_  
City and County Attorney

COMPANY

BIF IV Intrepid OpCo, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Jeffrey Polachek, Chief Construction Officer  
Address: 11001 W 120th Ave, Suite 305,  
Broomfield, CO 80021

## EXHIBIT A

THE COMPANY SHALL PROVIDE THE FOLLOWING SUPPLEMENTAL SITE LICENSE SIGNED INCLUDING A MAP OF THE AREA TO BE CONSIDERED FOR INSTALLATION OF EQUIPMENT AS MORE PARTICULARLY DESCRIBED IN THE MASTER LICENSE AGREEMENT. IN ADDITION TO THIS DOCUMENT, THE COMPANY SHALL SUBMIT THE THEN CURRENT FORM OF ROW PERMIT APPLICATION (CURRENTLY REFERRED TO AS A PUBLIC/PRIVATE IMPROVEMENT PERMIT).

### FORM OF SUPPLEMENTAL SITE LICENSE

THIS SUPPLEMENTAL SITE LICENSE is entered into this \_\_\_ day of \_\_\_\_\_, 20\_\_\_ (“Effective Date”) between the City and County of Bromfield, Colorado, a Colorado home rule municipality and county (the “City”) and \_\_\_\_\_ (“Company”) (collectively, the “Parties”).

1. Supplemental Site License. The City grants to the Company a non-exclusive, revocable Supplemental Site License to locate, construct, operate, control and maintain the Equipment, as contemplated and defined in that certain Master License Agreement For Fiber Optic Network in connection with the operation of the Company’s Network, between the City and the Company dated \_\_\_\_\_, 20\_\_\_, within the Public ROW (as defined in the Master License Agreement) segment shown in Exhibit 1, attached hereto and incorporated herein by this reference (“Equipment Location”). **[DRAFTING NOTE: EACH TIME A SUPPLEMENTAL LICENSE IS GRANTED THE NUMBER FOR THE NEXT EXHIBIT SHALL BE INCREASED BY 1 DIGIT (i.e. Exhibit 1, Exhibit 2, Exhibit 3 etc.), SO EACH SUPPLEMENTAL SITE LICENSE CAN BE MORE EASILY TRACKED]**
2. Term of Supplemental Site License. The term of this Supplemental Site License shall be as set forth in Section 3 of the Master License Agreement.
3. Equipment Location Acknowledgement. The Company and the City acknowledge and agree that the general placement of the Equipment in the locations identified on Exhibit 1 are feasible and the City believes there is room within the ROW indicated for the Equipment; however, the individual permits issued for the installation of the Equipment shall list the detail as required and detailed in the Master License Agreement.
4. Incorporation of Master License Agreement. All of the terms and conditions of the Master License Agreement are incorporated herein by reference and made a part hereof without the necessity of repeating or attaching the Master License Agreement. In the event of a contradiction, modification, or inconsistency between the terms of the Master License Agreement and this Supplemental Site License, the terms of this Supplemental Site License shall govern. Capitalized terms used in this Supplemental Site License shall have the same meaning described for them in the Master License Agreement unless otherwise indicated herein.
5. Approvals. It is understood and agreed the Company’s ability to install its Equipment in the ROW is contingent upon its obtaining all of the appropriate certificates, permits and other approvals that may be required under Applicable Law.
6. Notice and Communications. All notices, requests, and demands to or upon any Party to this Supplemental Site License shall be in writing addressed to the person

designated in the Master License Agreement.

7. Governing Law. This Agreement shall be governed by the laws of the State of Colorado. Venue for any legal action related to this Agreement shall lie in the District Court, Broomfield County, Colorado.

THE CITY AND COUNTY OF BROOMFIELD,  
a Colorado municipal corporation and county

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City Engineer  
One DesCombes Drive  
Broomfield, CO 80020

APPROVED AS TO FORM:

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City and County Attorney's Office

BIF IV Intrepid OpCo, LLC,  
a Delaware limited liability company

---

Name:  
Title:

**EXHIBIT 1**

**Supplemental Site License Location Map**

[To be attached with Supplemental Site License Application]



## EXHIBIT B

### INSURANCE REQUIREMENTS

#### **CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including Pollution Liability**

1. All insurers must be licensed or approved to do business within the State of Colorado.
2. Contractor/Vendor's insurance carriers should have an A.M. Best Company rating of at least A- VII.
3. Additional Insured - City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Pollution Liability, and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations).
4. Primacy of Coverage – Coverage required of Contractors and Subcontractors shall be primary and non-contributory to any insurance carried by the City and County of Broomfield
5. All subcontractors must meet the same insurance requirements for the Contract or Purchase Order unless Risk Management has approved a deviation.
6. Subrogation Waiver – All insurance policies required under this Contract maintained by Contractor or its Subcontractors shall waive all rights of recovery against City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield.
7. Cancellation, Change in Coverage or Limits– The above insurance policies shall include provisions preventing cancellation, non-renewal, or reduction in coverage or limits of any insurance, without at least 30 days prior notice to Contractor/Vendor and Contractor/ Vendor shall forward such notice to within seven days of receipt of such notice.
8. Certificates – Contractor and all Subcontractors shall provide certificates showing insurance coverage required hereunder to the City and County of Broomfield within 5 days of:
  - a. the effective date of the Contract
  - b. the expiration date of any coverage
  - c. a request by the City and County of Broomfield
9. Separation of Insureds. All insurance policies shall include coverage for cross liability and contain a "Separation of Insureds" provision in the general liability policy.
10. City and County of Broomfield in no way warrants that the limits required herein are sufficient to protect the Contractor/Vendor from liabilities that may arise out of the performance of the work under this Contract by the Contractor, its agents, representative, employees or subcontractors. The Contractor is not relieved of any liability or other obligations assumed or pursuant to the Contract by reason of its failure to obtain or maintain insurance in sufficient amounts, duration or type.
11. All parties understand and agree that the City and County of Broomfield is relying on, and does not waive or intend to waive by any provision of this Contract, the monetary limitations, immunities, protections or any other rights provided by the Colorado Governmental Immunity Act.
12. The City and County of Broomfield reserves the right to negotiate additional specific insurance requirements at the time of the Contract.
13. The City and County of Broomfield and Contractor shall cooperate with each other in the collection of any insurance proceeds which may be payable in the event of any loss, including the execution and delivery of any proof of loss or other actions required to effect recovery.

Vendor/Contractor/Subcontractor shall obtain and maintain, at its own expense and for the duration of the contract including any warranty periods under which the Contract are satisfied, the following:

Insurance Requirements - Including Pollution Liability		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	<b>Commercial General Liability</b> <ul style="list-style-type: none"> <li>Commercial General Liability insurance covering all operations by or on behalf of the contractor/vendor on an occurrence basis against claims for bodily injury, property damage (including loss of use), advertising liability, products and completed operations, and contractual liability.</li> </ul> <p><b>Note:</b> For contracts involving vendor/contractor contact with minors or at risk adults Sexual Abuse and Misconduct Coverage should be included in the coverage requirements.</p>	<b>Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$5,000,000 Each Occurrence</li> <li>\$5,000,000 General Aggregate (Per project aggregate for construction contracts)</li> <li>\$5,000,000 Products/Completed Operations Aggregate (for construction projects, this coverage should be maintained for a minimum of 3 years from the end of the project)</li> </ul>
2.	<b>Automobile Liability</b> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 each accident combined single limit.</li> <li>\$2,000,000 General Aggregate</li> <li>If hazardous materials are transported, an MCS 90 form shall be included on the policy.</li> </ul>
3.	<b>Workers' Compensation</b> <ul style="list-style-type: none"> <li>Workers' Compensation Insurance as required by State statute, covering all Vendors/Contractors employees acting within the course and scope of their employment.</li> </ul> <p><b>Note:</b> This requirement shall not apply when a contractor or subcontractor is exempt under the Colorado Workers' Compensation Act AND when such contractor or subcontractor provides an appropriate sole proprietor letter.</p>	<b>Employer's Liability with Minimum Limits:</b> <ul style="list-style-type: none"> <li>\$100,000 Each Accident</li> <li>\$100,000 Each Employee by Disease</li> <li>\$500,000 Disease Aggregate</li> </ul>
4.	<b>Environmental Liability Insurance</b> <ul style="list-style-type: none"> <li>Contractor/Vendor will purchase an environmental liability policy covering bodily injury and property damage claims, including cleanup costs, as a result of pollution conditions arising from contractor/vendors operations and completed operations.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$1,000,000 Each Occurrence/Aggregate</li> </ul>
5.	<b>Excess or Umbrella Coverage</b> <ul style="list-style-type: none"> <li>Excess or Umbrella Liability insurance on an occurrence basis covering in excess of commercial general liability insurance, which has coverage as such policy.</li> </ul>	<b>Minimum Limit:</b> <ul style="list-style-type: none"> <li>\$2,000,000 Each Occurrence/Aggregate</li> </ul>
<p><b>Additional Insured - The following shall be named an Additional Insured:</b> The City and County of Broomfield, its officers, board members, agents, employees and volunteers acting within the scope of their duties for the City and County of Broomfield shall be named as Additional Insured on all Commercial General Liability, Pollution Liability, Umbrella Liability and Automobile Liability Insurance policies (construction contracts require Additional Insured coverage for completed operations). A Waiver of Subrogation is provided in favor of the Additional Insureds as respects to all policies.</p> <p><b>Certificate Holder is:</b>  City and County of Broomfield  One DesCombes Drive  Broomfield, CO 80020-2495  <a href="mailto:certificates@broomfield.org">certificates@broomfield.org</a></p>		

Any deviations below the standards given above must be approved by the City and County of Broomfield's Risk Management office. Please direct any questions to [RiskManagement@broomfield.org](mailto:RiskManagement@broomfield.org)



### Executive Session Request for Legal Advice Regarding Business Development

Request to hold executive session for the purpose of obtaining legal advice regarding business development.

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Consent Items Item: 6H
Presented By	
Nancy Rodgers, City and County Attorney	
Community Goals	

## Overview

[View Correspondence](#)

The City and County Attorney requests scheduling an executive session for the purpose of obtaining legal advice regarding business development. The executive session is proposed for August 20, 2024 immediately following Council's study session. In the event the executive session is not needed, it will be canceled.

### Attachments

[Executive Session Request for Legal Advice Regarding Business Development.pdf](#)

## Summary

### [View Correspondence](#)

The City and County Attorney requests scheduling an executive session for the purpose of obtaining legal advice regarding business development. The executive session is proposed for August 20, 2024 to take place immediately following the study session. In the event the executive session is not needed, it will be canceled.

An executive session is permitted under C.R.S. § 24-6-402(4)(b) and (e) and requires an affirmative vote of 2/3rds of the quorum present.

The open meetings provision of the Colorado Sunshine Act of 1972 (Act) requires that any local public body announce in public the topic for discussion for the executive session. In addition, the local public body must include the specific citation in the Act that authorizes the local public body to meet in executive session. The local public body must also identify the particular matter to be discussed in as much detail as possible without compromising the purpose for which the executive session is authorized. C.R.S. § 24-6-402(4).

Executive sessions are electronically recorded. The record of an executive session must also state the specific citation in the Act authorizing the executive session. Portions of an executive session that are purely for purposes of obtaining legal advice do not need to be recorded.

## Financial Considerations

N/A

## Prior Council or Other Entity Actions

N/A

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

Based on the above, it is recommended that Council approve, by 2/3rds vote, the following motion ...

That the City Council schedule an executive session to be held on August 20, 2024 immediately after Council's study session, for the purpose of obtaining legal advice regarding business development as permitted by C.R.S. § 24-6-402(4)(b) and (e).

## Alternatives

Deny motion and not schedule the executive session.



### Public Hearing Charter Ballot Question Ordinances - 2nd Reading

Second reading of six potential ballot questions regarding ordinances.

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Action Items Item: 7A
Presented By	
Nancy Rodgers, City and County Attorney	
Community Goals	

## Overview

[View Correspondence](#)

Five ballot question ordinances were considered and approved on first reading during the July 9, 2024 Council meeting. Those 5 ordinances covered the following topics: term limits, rezoning by resolution, publication of ordinances, the Personnel Merit System, and legal and Broomfield's judiciary. Additionally, following a discussion during the July 9, 2024 Council meeting, Council directed staff to prepare a ballot question ordinance addressing the length of the mayor's term of office. That ordinance was heard and approved on first reading during the July 30, 2024 Council meeting.

This will be the second reading of these six ballot question ordinances.

### **Attachments**

[Memo - Proposed Ordinances for Potential Charter Changes High Priority and Term Limits - 2nd Reading..pdf](#)  
[Ordinance 2243 - Ballot Question Section 4.3 - Term Limits .pdf](#)  
[Ordinance 2244 - Ballot Question Section 6.4 - Rezone by Resolution.pdf](#)  
[Ordinance 2245 - Ballot Question Section 6.9 - Publication of Ordinances on Website.pdf](#)  
[Ordinance 2246 - Ballot Question Chapter IX - Personnel Merit System.pdf](#)  
[Ordinance 2247 - Ballot Question Chapter X - Legal and Judiciary.pdf](#)  
[Ordinance 2248 - Ballot Question Section 4.3\\_ The Length of the Mayor's Term.pdf](#)

## Summary

### [View Correspondence](#)

On June 11, 2024, Council considered two Charter change ballot question ordinances. One of those changes was a full repeal and replacement ballot question encompassing all proposed changes to the Charter. After hearing public comment from residents that bundling Charter changes was not preferred and considering (and ultimately rejecting) the repeal and replace ballot question, Council held a study session on June 18, 2024, to consider presenting other specific Charter change ballot questions to the voters in the November 2024 election. Following the discussion during the June 18, 2024 study session, Council directed staff to prepare five additional ballot question ordinances. Those questions were considered and approved as separate ordinances on first reading on July 9, 2024. This is the second reading and final vote of these ballot question ordinances.

Additionally, following a discussion during the July 9, 2024 Council meeting, Council directed staff to prepare a ballot question ordinance addressing the length of the mayor's term of office. That ordinance was heard and approved on first reading during the July 30, 2024 Council meeting. This is also the second reading and final vote on that ballot question ordinance.

The six ballot question ordinances being considered by Council on second and final reading are:

- (1) Ordinance 2243: Chapter IV, Section 4.3: Terms of Office (Term Limits) - Mayor and Councilmembers  
CRC recommendation

Adds term limits for elected officials to be 3 consecutive terms (Note: term limits are not currently in Charter; Broomfield follows state law: 2 terms for 4-year elected terms and 3 terms for 2-year elected terms).

- (2) Ordinance 2244: Chapter VI - Legislation, Section 6.4: Rezone by Resolution  
CRC Recommendation; Staff Priority

Revises the language in the Charter to require that land use rezones for a specific property (not a multiple property development) to be approved by resolution, not ordinance.

- (3) Ordinance 2245: Chapter VI - Legislation, Section 6.9: Publication of Ordinances on Website  
CRC Recommendation; Staff Priority

Modifies the publication requirement of ordinances so that ordinances are required to be published on the City and County website rather than a newspaper; ordinances can be published in a newspaper upon Council's direction.

- (4) Ordinance 2246: Chapter IX - Personnel Merit System  
CRC Recommendation; Staff Priority

This ballot question seeks specific updates to Chapter IX applicable to Broomfield's employees.

A Personnel Merit System (PMS) remains required by the Charter.

Clarifies who is included/excluded in the PMS: includes all Broomfield employees except all department heads, the Chief of Police (new), the deputy/assistant city (new) and county managers, elected officers, Council appointees, temporary employees (new), boards and commission members, and special inquiry contractors.

Clarifies language to require the Personnel Merit System provide non-probationary employees a right to administratively appeal any disciplinary action.

Removes reference to the Personnel Merit Commission from Charter (note: The Commission still remains in Code and is an active Commission).

(5) Ordinance 2247: Chapter X - Legal and Judiciary  
CRC Recommendation; Staff Priority

This ballot question seeks specific updates to Chapter X to match current operations:

City and County Attorney

Broadens the language to recognize that the City and County Attorney employs staff in addition to attorneys, such as the Risk Manager and paralegals.

Specifies that special counsel works under the direction of the City and County Attorney, who serves at the pleasure of Council.

Municipal Court

Revises this section so that the Presiding Judge shall be the “department head” for the Court and will hire and supervise associate judges and such staff as needed by the Court.

Modifies the requirements for removal of a judge to reference the Colorado Code of Judicial Conduct.

(6) Ordinance 2248: Chapter IV, Section 4.3: Terms of Office (Length of Mayor’s Term)  
CRC Recommendation

This ballot question asks the voters if they want to extend the mayor’s length of term from 2 years to 4 years, starting with the mayor elected in November 2025.

If approved and in addition to the Chapter III (Elections) Ballot Question (Ord. 2239), approved on July 9, 2024, there will be seven Broomfield Charter ballot questions on the November 2024 ballot.

## Process for Approving a Ballot Question

Charter amendments are permitted by Broomfield’s Constitutional Amendment and Section 18.6 of the Charter, which references state statute. Specifically, Broomfield is permitted to “make, amend, add to, or replace its charter...” Colo. Const. Art. XX, Section 10. This permits the City Council to adopt ordinances with the proposed amendments and ballot titles to be submitted to the voters. Ballot questions can be referred to the voters via an ordinance adopted by the governing body. C.R.S. 31-2-210. All ordinances must be confined to a single subject. See Charter, Section 6.2. “Single subject” means the subject matter has to

be “necessarily and properly connected rather than disconnected or incongruous” and not create a situation where there are two distinct purposes. *Hayes v. Spalding*, 2016 CO 24, 1 (Colo. 2016). There can be more than one ballot question put on the ballot. If provisions of two or more proposed amendments adopted or approved at the same election conflict, the amendment receiving the highest affirmative vote shall become effective.

## Restriction on Government Support for Ballot Questions

After the ballot question is approved, government funds and resources may not be used in either supporting or opposing the ballot question. Elected officials may use personal time and funds to take positions on ballot issues. Complete copies of the proposed Charter showing all changes will be made available at the City and County Clerk’s office and on the Broomfield website along with other informational materials.

## Financial Considerations

Some of the proposed changes to the Charter, if approved by the voters, will have a specific financial impact. Those impacts are listed below.

Section 6.9 Permitting the publication of approved ordinances on Broomfield’s website instead of in a local newspaper is expected to save approximately \$20,000 annually.

For the other proposed changes, staff does not believe the change will have a financial impact on Broomfield operations or the financial impact is more in the terms of staff and Council time and cannot be easily quantified.

## Prior Council or Other Entity Actions

[September 27, 2022 Resolution No. 2022-106](#): Council establishes the Charter Review Committee.

[March 7, 2023](#): Council appointed the CRC members.

[April 16, 2024](#), [May 7, 2024](#), and [May 21, 2024](#): Council study sessions to discuss the recommended changes and timing of such changes.

[June 11, 2024](#): Council’s consideration on first reading of a repeal and replace ballot question ordinance ([Proposed Ord. No. 2238](#)) and a Chapter III/elections ballot question ordinance ([Proposed Ord. No. 2239](#)). The repeal and replacement ballot question ordinance failed on first reading.

[June 18, 2024](#): Council study session to discuss potential additional Charter changes to put on the ballot.

[July 9, 2024](#): Council approved [Proposed Ord. No. 2239](#), Chapter III/elections ballot question ordinance. Council also approved, on first reading [five proposed ordinances](#) with separate ballot questions on term limits, rezoning, ordinance publication, personnel chapter, and legal and judiciary chapter.

[July 30, 2024](#): Council approved Proposed Ord. No. 2248, on extending the mayor’s term from 2 years to 4 years starting with the mayor elected in November 2025.

## Boards and Commissions Prior Actions and Recommendations

[November 14, 2023](#): The CRC presented its final report and recommendation to Council.



## Proposed Actions / Recommendations

If Council desires to proceed with the ballot questions, the appropriate motion for each ordinance is:

That Ordinance [number] be approved on second reading and published in full.

## Alternatives

Do not approve the proposed ballot question(s), and/or other direction as provided by Council. Any ballot questions must be approved no later than the August 13, 2024 Council meeting to meet state deadlines for the 2024 election.

## Background

**History:** Broomfield became a City and County in November 2001, but the [Home Rule Charter](#) has been in effect since 1974. Home rule charters detail the structure and powers of a local government. The Charter has been [amended ten \(10\) times](#) in its history. Each time, the Charter amendment was specific to a certain issue or topic. Broomfield had not undertaken a full review of the Charter since it went into effect in 1974.

**Charter Review Committee:** On September 27, 2022, City Council established the Charter Review Committee (CRC) to review the Broomfield Charter and make recommendations to Council regarding any needed changes. The CRC presented its recommendations and final report to Council on November 14, 2023. The background on Broomfield's Charter, the Charter Review Committee, the CRC's recommendations, and Councilmembers' proposed changes to the Charter can be found in the staff memo for the [April 16, 2024](#) Study Session.

**Council Study Sessions:** During April and May 2024, Council held three Study Sessions for the purpose of reviewing and discussing the CRC's recommendations for changes to Broomfield's Charter, as well as other possible changes suggested by Council members. For the May 21, 2024 study session, staff had prepared a [chart with each potential Charter change](#) for Council to use to rank the priority of each. There are also notes about staff priorities. At these meetings, there was consensus from Council on moving forward with almost all of the Charter Review Committee's recommendations, and some of the Council's proposed changes to the Charter.

**Prior Council Direction:** At the May 21, 2024 study session, Council gave direction to staff to prepare an ordinance with one ballot question for a full Charter replacement and direction to also prepare a ballot question specific to the changes in Chapter III. After the full Charter replacement question failed, Council held a study session on June 18, 2024. Council directed staff to prepare five additional questions that included the term limits change recommended by the Charter Review Committee and those that were marked as a high priority for staff. On July 9, 2024, after the discussion involving term limits and the acknowledgement that term length is a separate subject from term limits, Council directed staff to prepare a question specifically on the CRC's recommendation that the mayor's term be extended from 2 to 4 years. For prior Council votes, please see above in the section entitled "Prior Council or Other Entity Action."

**Chapter III - Elections Question Already Approved to Be on the 2024 Ballot:** On June 11, 2024, Council considered a Chapter III/elections ballot question ordinance ([Proposed Ord. No. 2239](#)). On July 9, 2024, Council approved Ord. No. 2239 on second and final reading. This ballot question, if approved by the voters, would change the applicable state law governing elections to the Uniform Election Code (Title 1), except as otherwise provided for in Charter and Code. The final vote has been taken on this ballot question and it is now up for consideration on August 13, 2024.

# ORDINANCE NO. 2243

An ordinance submitting to a vote of the registered electors of the City and County of Broomfield at the coordinated election to be held on November 5, 2024, a proposed amendment to Chapter IV, Section 4.3 of the Broomfield Charter to Set Term Limits for Elected Officials

## Recitals.

WHEREAS, Broomfield became a City and County in November 2001, but the Home Rule Charter has been in effect since 1974. Home rule charters detail the structure and powers of a local government; and

WHEREAS, City Council established a Charter Review Committee to do a comprehensive review of and recommend changes to the Charter; and

WHEREAS, Section 4.3 of the Charter governs the terms of office for Mayor and councilmembers, with the Mayor having a 2-year term and councilmembers having 4-year staggered terms; and

WHEREAS, while the length of terms is set forth in the Charter, there is no provision in the Charter regarding term limits, therefore Broomfield has followed state law which provides for three (3) terms for 2-year elected terms and two (2) terms for 4-year elected terms; and

WHEREAS, currently, the Mayor is limited to three 2-year terms for six years total and councilmembers are limited to two 4-year terms for eight years total; and

WHEREAS, the Charter Review Committee recommended that Broomfield establish its own term limits in Charter and set those limits at three consecutive partial or full terms in office for all elected officials; and

WHEREAS, if approved, this change would establish a Charter-requirement that a mayor is limited to three terms for a total of six years, if elected by the voters, and councilmembers would be limited to three terms for a total of twelve years, if elected by the voters; and

WHEREAS, Charter amendments are permitted by Broomfield's Constitutional Amendment and Section 18.6 of the Charter, and may be referred to the voters via an ordinance adopted by Council.

NOW THEREFORE, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

## Section 2.

Subject to the approval of the registered electors of the City and County of Broomfield, Chapter IV, Section 4.3 of the Broomfield Charter shall be amended with the addition shown in **bold underline** below, establishing term limits for elected officials, which ballot question shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1C” at the November 2024 election:

### CHAPTER IV - COUNCIL AND MAYOR

#### Section 4.3 Terms of Office - Mayor and Councilmembers.

- (a) The terms of office of the councilmembers, including the Mayor, hereafter to be elected in accordance with the provisions of this Charter, shall commence on their taking the oath of office at the ensuing organizational meeting of the City Council held after the election in the year elected and shall continue during the term for which they shall have been elected until their successors shall have been elected and duly qualified.
- (b) On the first Tuesday after the first Monday in November, in the year 1977, the first regular municipal election shall be held under the provisions of this Charter amendment, at which time a Mayor shall be elected from the City at large for a two (2) year term and shall be elected every two years thereafter; and two (2) councilmembers shall be elected from each of the five (5) wards of the City as follows: the candidate receiving the highest number of votes within each ward shall be elected for a four (4) year term and the candidate receiving the next highest number of votes within said ward shall be elected for two (2) year term. Thereafter, each councilmember shall be elected for a four year term.
- (c) **No Mayor or Councilmember shall serve more than three consecutive partial or full terms in office. For the purpose of this Section 4.3, the offices of mayor and councilmember are different offices, a partial term means at least 50% of the regular term, and terms are considered consecutive unless they are at least four years apart.**

## Section 3. Ballot Question.

The following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

### Proposed Charter Amendment No. 1C (Term Limits)

Shall Section 4.3 of the Broomfield Home Rule Charter be amended to limit a mayor and limit a councilmember to no more than three consecutive terms of office, provided the voters of Broomfield choose to reelect that person?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

#### **Section 4. Ballot Numbering.**

It is Council's intent that the numbers for the Broomfield ballot questions (currently proposed to be 1B through 1G) be as low as possible. In the event that one or more proposed ballot question ordinances are not be approved, Council authorizes staff to modify the ballot number stated above so that the Broomfield Charter change ballot questions are sequential and with the lowest numbers possible.

#### **Section 5. Publication.**

Publication of this ordinance in full after final approval constitutes publication of notice of an election upon the proposed amendment pursuant to Section 31-2-210(4) of the Colorado Revised Statutes.

#### **Section 6. Severability.**

If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

#### **Section 7. Effective Date**

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on July 9, 2024, and ordered published in full.

Introduced a second time and approved on August 13, 2024, and further ordered published in full.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

# ORDINANCE NO. 2244

An ordinance submitting to a vote of the registered electors of the City and County of Broomfield at the coordinated election to be held on November 5, 2024, a proposed amendment to Chapter VI, Section 6.4 of Broomfield Charter to Permit Rezones by Resolution.

## Recitals.

WHEREAS, Broomfield became a City and County in November 2001, but the Home Rule Charter has been in effect since 1974. Home rule charters detail the structure and powers of a local government; and

WHEREAS, City Council established a Charter Review Committee to do a comprehensive review of and recommend changes to the Charter; and

WHEREAS, the Charter Review Committee recommended and staff strongly supported amending the Charter so that rezones for a specific property could be approved by resolution instead of ordinance; and

WHEREAS, this change was a priority for staff because there can be confusion when a land use application is being considered by Council and other related document approvals, such as site development plan amendments or comprehensive plan amendments, can be approved by resolution at one Council meeting, but a rezone must be approved by ordinance at two Council meetings; and

WHEREAS, the public still has ample opportunity to participate in the land use application process, including online engagement, the Land Use Revision Commission public meeting, and/or at the public meeting held by Council; and

WHEREAS, Charter amendments are permitted by Broomfield's Constitutional Amendment and Section 18.6 of the Charter, and may be referred to the voters via an ordinance adopted by Council.

NOW THEREFORE, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

## Section 2.

Subject to the approval of the registered electors of the City and County of Broomfield, Chapter VI, Section 6.4 of the Broomfield Charter shall be amended as shown in **bold underline**, permitting rezoning by resolution at a public meeting, which ballot question shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1D” at the November 2024 election:

### CHAPTER VI LEGISLATION

#### Section 6.4 Action by Ordinance Required.

In addition to such acts of the Council as are required by other provisions of this charter to be by ordinance, every act making an appropriation, creating an indebtedness, authorizing borrowing of money, levying a tax, establishing any rule or regulation for the violation of which a penalty is imposed, or placing any burden upon or limiting the use of private property, shall be by ordinance; provided, however, that this section shall not apply to **rezonings and other land use cases relating to a specific property, which may be approved by resolution at a public hearing** or the adoption of the budget and levying of an ad valorem tax, as provided in this Charter.

## Section 3. Ballot Question.

The following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

### **Proposed Charter Amendment No. 1D (Rezoning Specific Properties by Resolution)**

Shall Section 6.4 of the Broomfield Home Rule Charter be amended to permit City Council to approve rezonings and other land use cases relating to a specific property by resolution at a public hearing?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

## Section 4. Ballot Numbering.

It is Council’s intent that the numbers for the Broomfield ballot questions (currently proposed to be 1B through 1G) be as low as possible. In the event that one or more proposed ballot question ordinances are not be approved, Council authorizes staff to modify the ballot number stated above so that the Broomfield Charter change ballot questions are sequential and with the lowest numbers possible.

## Section 5. Publication.

Publication of this ordinance in full after final approval constitutes publication of notice of an election upon the proposed amendment pursuant to Section 31-2-210(4) of the Colorado Revised Statutes.

## Section 6. Severability.

If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

## Section 7. Effective Date

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on July 9, 2024, and ordered published in full.

Introduced a second time and approved on August 13, 2024, and further ordered published in full.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney



# ORDINANCE NO. 2245

An ordinance submitting to a vote of the registered electors of the City and County of Broomfield at the coordinated election to be held on November 5, 2024, a proposed amendment to Chapter VI, Section 6.9 of Broomfield Charter Permitting Publication of Ordinances on the Broomfield Website

## Recitals.

WHEREAS, Broomfield became a City and County in November 2001, but the Home Rule Charter has been in effect since 1974. Home rule charters detail the structure and powers of a local government; and

WHEREAS, City Council established a Charter Review Committee to do a comprehensive review of and recommend changes to the Charter; and

WHEREAS, the Charter Review Committee recommended and staff strongly supported amending the Charter so that ordinances are required to be published on the City and County website rather than a newspaper; and

WHEREAS, the proposed change permits ordinances to be published in a newspaper by title upon Council's direction; and

WHEREAS, this change was a priority for staff because of the cost associated with publication in the newspaper as well as a recognition of the use of the website as one of the main sources of information dissemination by the City and County of Broomfield to the community; and

WHEREAS, Charter amendments are permitted by Broomfield's Constitutional Amendment and Section 18.6 of the Charter, and may be referred to the voters via an ordinance adopted by Council.

NOW THEREFORE, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

## Section 2.

Subject to the approval of the registered electors of the City and County of Broomfield, Chapter VI, Section 6.9 of the Broomfield Charter shall be amended as shown in **bold underline**, and deleted language shown in ~~strike through~~ below, permitting publication of ordinances on the City and County of Broomfield website, which ballot question shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1E” at the November 2024 election:

### CHAPTER VI LEGISLATION

#### Section 6.9 Publication of Ordinances.

Pursuant to requirements for publication of ordinances as provided elsewhere in this Charter, ~~said~~ ordinances shall be published **on the City and County’s website, and may also, in the City Council’s discretion, be published by title or in full** in a newspaper of general circulation in the City **and County**.

## Section 3. Ballot Question.

The following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

### Proposed Charter Amendment No. 1E (Publication of Ordinances on Website)

Shall Section 6.9 of the Broomfield Home Rule Charter be amended to require publication of ordinances on the City and County of Broomfield website and permit, but not require, publication in a newspaper of general circulation?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

## Section 4. Ballot Numbering.

It is Council’s intent that the numbers for the Broomfield ballot questions (currently proposed to be 1B through 1G) be as low as possible. In the event that one or more proposed ballot question ordinances are not be approved, Council authorizes staff to modify the ballot number stated above so that the Broomfield Charter change ballot questions are sequential and with the lowest numbers possible.

## Section 5. Publication.

Publication of this ordinance in full after final approval constitutes publication of notice of an election upon the proposed amendment pursuant to Section 31-2-210(4) of the Colorado Revised Statutes.

## Section 6. Severability.

If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

## Section 7. Effective Date

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on July 9, 2024, and ordered published in full.

Introduced a second time and approved on August 13, 2024, and further ordered published in full.

The City and County of Broomfield, Colorado

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Mayor

Attest:

---

Office of the City and County Clerk

Approved as to form:

*NCR*

---

City and County Attorney

# ORDINANCE NO. 2246

An ordinance submitting to a vote of the registered electors of the City and County of Broomfield at the coordinated election to be held on November 5, 2024, a proposed amendment revising Chapter IX of Broomfield Charter, Personnel Merit System

## Recitals.

WHEREAS, Broomfield became a City and County in November 2001, but the Home Rule Charter has been in effect since 1974. Home rule charters detail the structure and powers of a local government; and

WHEREAS, City Council established a Charter Review Committee to do a comprehensive review of and recommend changes to the Charter; and

WHEREAS, the Charter Review Committee recommended and staff strongly supported amending the Charter to update Chapter IX relating to the Personnel Merit System for Broomfield; and

WHEREAS, this change was a priority for staff because of the need to update Chapter IX to clarify who is and is not included in the Personnel Merit System and to set forth a specific right for administrative appeals for non-probationary employees; and

WHEREAS, this change also removed the reference to the Personnel Merit Commission from the Charter. The Personnel Merit Commission remains an active commission as set forth in detail in the Broomfield Municipal Code; and

WHEREAS, Charter amendments are permitted by Broomfield's Constitutional Amendment and Section 18.6 of the Charter, and may be referred to the voters via an ordinance adopted by Council.

NOW THEREFORE, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

## Section 2.

Subject to the approval of the registered electors of the City and County of Broomfield, Chapter IX of the Broomfield Charter shall be amended as shown in **bold underline**, and

deleted language shown in ~~strikethrough~~ below, updating Chapter X, which ballot question shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1F” at the November 2024 election:

Section 9.1 Personnel Merit System.

- (a) ~~The City and County shall maintain a Personnel Merit System. Within one year after the effective date of this Charter that City Council shall create and enact a Personnel Merit System and establish a Personnel Merit Commission composed of three (3) registered electors.~~
- (b) The Personnel Merit System shall include all city and county employees ~~within the provision including the police and fire department chiefs and exclude from the system shall be~~ excluding the City and County Manager, deputy and assistant City and County manager(s), department heads ~~excepting the police and fire department heads~~, elective officers, appointees of Council, temporary employees, appointed members of boards and commissions, and persons employed to make or conduct a special inquiry, investigation, examination or installation or audit.
- (c) The Personnel Merit ~~System~~ Commission shall provide any included, non-probationary employee who has been subject to disciplinary action with a right to an administrative appeal, ~~have jurisdiction and final authority to hear and determine appeals by any aggrieved employee who has been subject to disciplinary action of any kind.~~
- ~~(d) The Personnel Merit Commission shall promulgate its own rules and regulations consistent with implementing ordinances adopted by Council.~~

### Section 3. Ballot Question.

The following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

**Proposed Charter Amendment No. 1F  
(Chapter IX Personnel)**

Shall Chapter IX, Personnel, of the Broomfield Home Rule Charter be amended to:

- update language,
- retain the Personnel Merit System for classified full-time and part-time employees,
- set forth a right in Charter to an administrative appeal,
- clarify that all department heads, the city and county manager, and the deputy/assistant city and county managers are excluded from the Personnel Merit System, and
- remove the reference to the Personnel Merit Commission, which remains in Code?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

## Section 4. Ballot Numbering.

It is Council's intent that the numbers for the Broomfield ballot questions (currently proposed to be 1B through 1G) be as low as possible. In the event that one or more proposed ballot question ordinances are not be approved, Council authorizes staff to modify the ballot number stated above so that the Broomfield Charter change ballot questions are sequential and with the lowest numbers possible.

## Section 5. Publication.

Publication of this ordinance in full after final approval constitutes publication of notice of an election upon the proposed amendment pursuant to Section 31-2-210(4) of the Colorado Revised Statutes.

## Section 6. Severability.

If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

## Section 7. Effective Date

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on July 9, 2024, and ordered published in full.

Introduced a second time and approved on August 13, 2024, and further ordered published in full.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

---

City and County Attorney

# ORDINANCE NO. 2247

An ordinance submitting to a vote of the registered electors of the City and County of Broomfield at the coordinated election to be held on November 5, 2024, a proposed amendment revising Chapter X of Broomfield Charter, Legal and Judiciary

## Recitals.

WHEREAS, Broomfield became a City and County in November 2001, but the Home Rule Charter has been in effect since 1974. Home rule charters detail the structure and powers of a local government; and

WHEREAS, City Council established a Charter Review Committee to do a comprehensive review of and recommend changes to the Charter; and

WHEREAS, the Charter Review Committee recommended and staff strongly supported amending the Charter to update the provisions applicable to the City and County Attorney and to Municipal Courts; and

WHEREAS, both the City and County Attorney's office and the Municipal Courts have changed since the adoption of the Broomfield Home Rule Charter, and this Chapter has never been updated since 1974; and

WHEREAS, the updates reflected in this proposed change reflect the current operational status of both the City and County Attorney's office and the municipal court; and

WHEREAS, the recommended changes for municipal courts include permitting the presiding judge to hire associate judges as needed, subject to annual appropriates, and amends the grounds for removal of a municipal judge to reference the Colorado Code of Judicial Conduct; and

WHEREAS, Charter amendments are permitted by Broomfield's Constitutional Amendment and Section 18.6 of the Charter, and may be referred to the voters via an ordinance adopted by Council.

NOW THEREFORE, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

## Section 2.

Subject to the approval of the registered electors of the City and County of Broomfield, Chapter X of the Broomfield Charter shall be amended as shown in **bold underline**, and deleted language shown in ~~striketrough~~ below, updating Chapter X, which ballot question shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1G” at the November 2024 election:

### CHAPTER X LEGAL AND JUDICIARY

#### Section 10.1 City **and County** Attorney.

The Council shall appoint a City **and County** Attorney to serve at the pleasure of Council. The City **and County** Attorney shall be an attorney-at-law admitted to practice in Colorado. The City **and County** Attorney shall be the legal representative of the City **and County** and shall advise the Council and City **and County** officials in matters relating to their official powers and duties and perform such other duties as Council may prescribe by ordinance or resolution. ~~The Council may provide the City~~ **and County** Attorney **shall hire and supervise** such assistants **and staff** ~~as Council may deem necessary~~, and may on ~~its~~ **their** own motion or upon request of the ~~Council~~ **City Attorney** employ special counsel **to serve under the direction of the city and county attorney**. ~~The~~ Council shall establish compensation for the City **and County** Attorney. ~~and for any assistants and special counsel appointed by the City.~~

#### Section 10.2 Municipal Court.

- (a) Municipal Judge. There shall be a municipal court vested with exclusive original jurisdiction of all causes arising under the ordinances of the city **and county** and as may be conferred by law. The municipal court shall be presided over and its functions exercised by a **presiding** judge appointed by the Council for a specified term of not less than two years. The Council may reappoint the **presiding** municipal judge for a subsequent term or terms, except that the initial appointment may be for a term of office which expires on the date of the organizational meeting of the Council after the next general election. Any vacancy in the office of **presiding** municipal judge shall be filled by appointment by the council for the remainder of the unexpired term. The **presiding** municipal judge shall be an attorney-at-law admitted to practice in the State of Colorado.
- (b) ~~Deputy Associate~~ Judges. ~~Council~~ **The presiding municipal judge** may appoint one or more ~~deputy associate~~ judges as ~~it~~ **the presiding municipal judge** deems necessary. The ~~deputy associate~~ municipal judge shall have all the powers of the municipal judge when called on to act by the **presiding** municipal judge or the Council. ~~In the event that more than one municipal judge is appointed, the Council shall designate a presiding municipal judge, who shall serve in this capacity during the term for which the municipal judge was appointed.~~ The ~~deputy associate~~ municipal judges shall be attorneys admitted to practice in the State of Colorado. ~~and serve at the pleasure of the Council.~~
- (c) Compensation **for Judges**. The **presiding** municipal judge shall receive a ~~fixed~~ **such** salary or compensation set by the Council which salary or compensation shall not be



dependent upon the outcome of the matters to be decided by the municipal judge. The ~~deputy associate~~ municipal judges may receive such compensation for services rendered as Council the presiding municipal judge may determine and as provided for in the budget, which compensation shall not be dependent upon the outcome of the matters to be decided by the associate judge.

- (d) Removal of Judges. Any municipal judge may be removed from office only for cause, as specified in the statutes applicable to removal of municipal judges, and for any other conduct that would constitute a violation of the Colorado Code of Judicial Conduct, as from time to time amended. ~~A judge may be removed for cause if:~~

- ~~(1) They are found guilty of a felony or any other crime involving moral turpitude;~~
- ~~(2) They have a disability which interferes with the ability to perform their duties, and which is, or is likely to become, of a permanent character;~~
- ~~(3) They have willfully or persistently failed to perform their duties; or~~
- ~~(4) They are habitually intemperate.~~

### Section 3. Ballot Question.

The following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

#### Proposed Charter Amendment No. 1G (Chapter X - Legal and Judiciary)

Shall Chapter X, Legal and Judiciary, of the Broomfield Home Rule Charter be amended to:

- update language,
- permit the City and County Attorney to employ both assistant attorneys and non-attorney staff,
- specify that special counsel works under the direction of the City and County Attorney, who serves at the pleasure of Council,
- recognizes the presiding municipal judge as the Court's department head who can hire and supervise associate judges and court staff, and
- sets the reasons for removal of a judge to be consistent with state statute or conduct that violates the Colorado Code of Judicial Conduct?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

## Section 4. Ballot Numbering.

It is Council's intent that the numbers for the Broomfield ballot questions (currently proposed to be 1B through 1G) be as low as possible. In the event that one or more proposed ballot question ordinances are not approved, Council authorizes staff to modify the ballot number stated above so that the Broomfield Charter change ballot questions are sequential and with the lowest numbers possible.

## Section 5. Publication.

Publication of this ordinance in full after final approval constitutes publication of notice of an election upon the proposed amendment pursuant to Section 31-2-210(4) of the Colorado Revised Statutes.

## Section 6. Severability.

If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

## Section 7. Effective Date

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on July 9, 2024, and ordered published in full.

Introduced a second time and approved on August 13, 2024, and further ordered published in full.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

# ORDINANCE NO. 2248

An ordinance submitting to a vote of the registered electors of the City and County of Broomfield at the coordinated election to be held on November 5, 2024, a proposed amendment to Chapter IV, Section 4.3 of the Broomfield Charter that would Change a Mayor's Term of Office from 2 years to 4 years

## Recitals.

WHEREAS, Broomfield became a City and County in November 2001, but the Home Rule Charter has been in effect since 1974. Home rule charters detail the structure and powers of a local government; and

WHEREAS, City Council established a Charter Review Committee to do a comprehensive review of and recommend changes to the Charter; and

WHEREAS, Section 4.3 of the Charter governs the terms of office for Mayor and councilmembers, with the Mayor having a 2-year term and councilmembers having 4-year staggered terms; and

WHEREAS, the Charter Review Committee recommended that Broomfield extend the length of the Mayor's term from 2 years to 4 years; and

WHEREAS, this ballot question does not change the term limits applicable to the Mayor; and

WHEREAS, Charter amendments are permitted by Broomfield's Constitutional Amendment and Section 18.6 of the Charter, and may be referred to the voters via an ordinance adopted by Council.

NOW THEREFORE, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

That the City Council hereby makes and adopts the determinations and findings contained in the recitals set forth above.

## Section 2.

Subject to the approval of the registered electors of the City and County of Broomfield, Chapter IV, Section 4.3 of the Broomfield Charter shall be amended with the addition shown

in **bold underline** below, setting the term of office for the mayor at 4 years instead of 2 years, which ballot question shall be submitted to the registered electors of the City as “Proposed Charter Amendment No. 1C” at the November 2024 election:

#### CHAPTER IV - COUNCIL AND MAYOR

##### Section 4.1 - City Council and Mayor.

- (a) The City Council shall consist of ten (10) Councilmembers, one (1) of whom shall serve as Mayor Pro-Tem. Two (2) of the Councilmembers shall be elected from each of the five (5) wards; the Mayor Pro-Tem shall be elected from within and by the Council, as hereinafter provided. Hereinafter, the words "entire Council" means those Councilmembers in office at the time a vote is taken.
- (b) The Mayor shall be elected at large from the entire City.

##### Section 4.2 - Wards.

- (a) The City is hereby divided into five (5) wards whose boundaries shall be the same as presently established. Changes in the boundaries of wards may be made by ordinance adopted by the City Council, which changes shall be made at least 180 days prior to any regular municipal election. Wards shall be contiguous and compact, and shall have approximately the same number of voters.
- (b) No change in the boundary of any ward shall operate to exclude any councilmember from office before the expiration of the term for which the incumbent was elected or appointed.

##### Section 4.3 Terms of Office - Mayor and Councilmembers.

- (a) The terms of office of the councilmembers, including the Mayor, hereafter to be elected in accordance with the provisions of this Charter, shall commence on their taking the oath of office at the ensuing organizational meeting of the City Council held after the election in the year elected and shall continue during the term for which they shall have been elected until their successors shall have been elected and duly qualified.
- (b) On the first Tuesday after the first Monday in November, in the year 1977, the first regular municipal election shall be held under the provisions of this Charter amendment, at which time a Mayor shall be elected from the City at large for a two (2) year term and shall be elected every two years ~~thereafter~~**until November 2025**; and two (2) councilmembers shall be elected from each of the five (5) wards of the City as follows: the candidate receiving the highest number of votes within each ward shall be elected for a four (4) year term and the candidate receiving the next highest number of votes within said ward shall be elected for two (2) year term. Thereafter, each councilmember shall be elected for a four year term. **Beginning with the**

election in November 2025 and thereafter, the mayor shall be elected for a four year term.

### **Section 3. Ballot Question.**

The following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

**Proposed Charter Amendment No. 1H  
(4 year term of office for Mayor)**

Shall Section 4.3 of the Broomfield Home Rule Charter be amended to provide that the term length for the position of mayor be extended from two (2) years to four (4) years, commencing for the mayor elected at the 2025 November election?

\_\_\_\_\_ Yes/For  
\_\_\_\_\_ No/Against

### **Section 4. Ballot Numbering.**

It is Council's intent that the numbers for the Broomfield ballot questions be as low as possible. In the event that one or more proposed ballot question ordinances are not be approved, Council authorizes staff to modify the ballot number stated above so that the Broomfield Charter change ballot questions are sequential and with the lowest numbers possible.

### **Section 5. Publication.**

Publication of this ordinance in full after final approval constitutes publication of notice of an election upon the proposed amendment pursuant to Section 31-2-210(4) of the Colorado Revised Statutes.

### **Section 6. Severability.**

If any clause, sentence, paragraph or part of this Ordinance or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

### **Section 7. Effective Date**

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on July 30, 2024, and ordered published in full.

Introduced a second time and approved on August 13, 2024, and further ordered published in full.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney



# City of Broomfield

## City Council Regular Meeting

### Proposed Resolution Potential Ballot Question Regarding the 17th Judicial District DA Term Limits

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Action Items Item: 7B
Presented By	
Nancy Rodgers, City and County Attorney	
Community Goals	

## Overview

[View Correspondence](#)

District Attorney Brian Mason requested that the Adams County Commissioners and the Broomfield City Council adopt a resolution with a ballot question of changing the term limits for the office of 17th Judicial District Attorney from two consecutive four year terms to three consecutive four year terms. If approved by both jurisdictions, the question will be placed on the November 2024 ballot.

### **Attachments**

[Memo - Proposed Resolution 2024-75 Potential Ballot Question Regarding DA Term Limits.pdf](#)

[Resolution 2024-75 District Attorney Term Limits .pdf](#)

## Summary

### [View Correspondence](#)

The Seventeenth Judicial District for the State of Colorado includes Adams County and the City and County of Broomfield. It is served by one District Attorney, who is voted in by the people of Adams County and Broomfield. Currently, the District Attorney is term-limited to two consecutive terms. State law permits the residents who live in the judicial district to modify those term limits. Article XVIII, Sec. 11, Colorado Constitution; Section 1-4-1401, Colo. Rev. Statutes, *et seq.*

District Attorney Brian Mason requested Broomfield City Council present the voters with a ballot question of changing the term limits for the office of 17th Judicial District Attorney from two consecutive four year terms to three consecutive four year terms. To do this, Council would approve a resolution with the ballot question. This is not a change to Broomfield's Charter, so the ballot question does not require an ordinance.

The Proposed Ballot Question would reads as follows:

For purposes of advancing public safety and promoting stability for the residents of Adams and Broomfield Counties, shall the term limits on the office of the district attorney for the 17th Judicial District be increased from two consecutive terms to three consecutive terms, provided that the voters re-elect him/her?

By law, the ballot question must be the same for both Broomfield and Adams County voters.

## Financial Considerations

N/A

## Prior Council or Other Entity Actions

[June 14, 2011](#) - Proposed Resolution No. 2011-102 approving a similar ballot question (the voters did not vote in favor of the change).

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to refer the ballot question, the appropriate motion is...  
**That Resolution 2024-75 be adopted.**

## Alternatives

Do not approve Resolution 2024-75 and do not refer the question to the voters. The question must be the same and must be on both Adams County's and Broomfield's ballots.



# RESOLUTION NO. 2024-75

A Resolution directing the City and County Clerk to place a question on the November 2024 ballot relating to the modification of term limits for the District Attorney in the Seventeenth Judicial District

WHEREAS, Pursuant to the Uniform Election Code, §§ 1-1-101, *et. seq.*, C.R.S., a general election will be held on November 5, 2024; and,

WHEREAS, the Seventeenth Judicial District for the State of Colorado includes Adams County and the City and County of Broomfield; and

WHEREAS, the Judicial District is served by one District Attorney, who is voted in by the people of Adams County and the City and County of Broomfield; and

WHEREAS, the District Attorney is currently term-limited to two consecutive terms; and

WHEREAS, State law permits the residents who live in the judicial district to modify those term limits. Article XVIII, Sec. 11, Colorado Constitution; Section 1-4-1401, Colo. Rev. Statutes, *et seq.*; and

WHEREAS, the Broomfield City Council intends to refer to the registered voters of Broomfield at the November 5, 2024 general election a ballot question that, if approved, would adjust the terms limits for the District Attorney for the 17th Judicial District to three consecutive terms from the current two consecutive terms, should that individual be reelected; and

WHEREAS, the Broomfield City Council acknowledges that the same ballot question must be on both the Adams County and Broomfield ballot and that the ballot question must be approved by the voters of both Adams County and Broomfield.

THEREFORE, be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

Pursuant to the authority granted to the Broomfield City Council by Section 7.2(c) of Broomfield's Home Rule Charter and Section 1-4-1401, Colo Rev. Statutes, the following ballot title and question shall be placed on the ballot of the November 5, 2024 election for the City and County of Broomfield for consideration by the registered electors:

**Proposed Charter Amendment No. \_\_\_\_**  
**(District Attorney Term Limits)**

“For purposes of advancing public safety and promoting stability for the residents of Adams and Broomfield Counties, shall the term limits on the office of the district attorney for the 17th Judicial District be increased from two consecutive terms to three consecutive terms, provided that the voters re-elect him/her?”

\_\_\_\_ Yes/For  
\_\_\_\_ No/Against

**Section 2. Ballot Numbering.**

In accordance with state law, it is Council’s intent that the number for this ballot question be the same as the number for Adams County, and direct the City and County Clerk to coordinate numbering with Adams County pursuant to applicable law and any requirements imposed by the Secretary of State’s office.

**Section 3.**

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024.

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
Office of the City and County Clerk

Approved as to form:

*NCR*  
\_\_\_\_\_  
City and County Attorney



## City of Broomfield

### City Council Regular Meeting

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#### Contracted Waste Hauling Ordinance- First Reading

Meeting	Agenda Group	
Tuesday, August 13, 2024, 6:00 PM	Action Items	Item: 7C
Presented By		
Ken Rutt		
Community Goals		
<input checked="" type="checkbox"/> Growing Greener		

#### Overview

[View Correspondence](#)

The Contracted Residential Waste Services program (formerly Universal Waste Collection) is designed to increase waste diversion. This program is aligned with the community's "growing greener" goal by reducing Broomfield's environmental footprint by diverting materials from landfills. This memo summarizes Ordinance No. 2242, which allows for implementation of a Contracted Residential Waste Services program.

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#### Attachments

[Memo -Contractred Waste Hauling Ordinance.pdf](#)

[City Contracted Waste Services Ordinance 2242.pdf](#)

# Summary

## [View Correspondence](#)

The [Contracted Residential Waste Services program](#) (formerly Universal Waste Collection) would change the current residential waste collection system from many licensed haulers to a City and County of Broomfield managed contract consisting of a single hauler or a few haulers assigned to different parts of Broomfield.

The program is designed to increase waste diversion. This program is aligned with the community's "growing greener" goal by reducing Broomfield's environmental footprint by diverting materials from landfills. The community's goal is 50% waste diversion by 2025. Broomfield's waste diversion rate has remained between 21% and 25% since 2020. Implementing the Contracted Residential Waste Services program with non-HOA residents is expected to increase waste diversion in Broomfield by 2% to 4%. In addition to waste diversion benefits, the Contracted Residential Waste Services will reduce the number of heavy trucks on Broomfield streets and thereby reduce associated air and noise pollution, potential safety concerns, and excess wear on pavement. This program will extend the benefit of bulk pricing to residents who do not live in an HOA.

Ordinance No. 2242 changes the Broomfield Municipal Code to allow the City to contract with a licensed hauler to provide residential waste collection services. Ordinance No. 2242 includes the following updates:

1. Allows the City to contract residential waste hauling services for residents of single-family homes and multi-family dwellings with seven or fewer units;
2. Allows the City to charge residents a minimum service or opt-out fee if they do not wish to participate in the program;
3. Requires non-exempted residents to separate recyclable materials from trash;
4. Exempts homeowners associations (HOAs) that contract for trash and recycling services without requiring them to pay a minimum service or opt-out fee.

Note: Ordinance No. 2242 takes effect only if Council approves a residential waste services contract with a hauler.

Ordinance No. 2242 does not require haulers to use volume-based pricing (or "pay-as-you-throw") to obtain a license to operate in Broomfield.

## Waste Hauler Contract Overview

At the October 10, 2023, City Council meeting, Council approved [Resolution No. 2023-123](#) directing staff to issue a "request for proposals" for City-Contracted Residential Waste Hauling Services.

Staff is currently in contract negotiations with a waste hauler for the Contracted Residential Waste Services program. Full details of this program, pricing, and the contract will be available ahead of Council's second reading of Ordinance No. 2242 and Council's consideration of the contract. Council will consider the contract for this program on the same date as the second reading of Ordinance No. 2242 (September 10, 2024).

Implementing the Contracted Residential Waste Services program with non-HOA residents is expected to increase waste diversion in Broomfield by 2% to 4%. In addition to waste diversion benefits, the Contracted

Residential Waste Services will reduce the number of heavy trucks on Broomfield streets and thereby reduce associated air and noise pollution, potential safety concerns, and excess wear on pavement. This program will extend the benefit of bulk pricing to residents who do not live in an HOA.

If approved, the Contracted Residential Waste Services program is expected to start in the second quarter of 2025.

## Financial Considerations

No funds are requested to implement this ordinance.

Approval of a residential waste hauling contract will have financial considerations. The following table outlines the positions and costs associated for the three full time employees (FTEs) required to implement the Waste Diversion's Contracted Residential Waste Hauling Program. The contract is currently under negotiation. Details will be confirmed and communicated ahead of the second reading of this ordinance.

Positions	Estimated Annual Cost
Revenue Technician (1 FTE)	\$62,938
Recycling Technician II (2 FTE)	\$142,144
<b>Total FTE: 3</b>	<b>Total cost: \$205,082</b>

## Prior Council or Other Entity Actions

February 11, 2020, Council approved [Resolution No. 2020-65](#), adopting Zero Waste Goals.

September 22, 2020, Council approved [Resolution No. 2020-169](#), adopting Greenhouse Gas Reduction as a Guiding Principle and Supporting the Creation of a Greenhouse Gas Reduction Plan.

October 9, 2020, Broomfield received an award ([letter](#)) of \$90,000 from CDPHE's "FWRD" grant program to hire a consultant to draft a zero-waste plan.

January 12, 2021, Council approved [Resolution No. 2021-5](#) approving a consulting agreement with Abbe & Associates, LLC (AKA Zero Waste Associates) in the amount of \$85,300 for professional services in regard to increasing recycling, composting, and waste diversion in Broomfield.

January 18, 2022, Staff was directed to prepare a ballot question to authorize the City & County to adopt a community recycling and composting ordinance and to contract with one or more private waste haulers for waste removal services, commonly known as Universal Collection.

July 26, 2022, Council rejected [Proposed Resolution No. 2022-94](#) adding a ballot question to the November 2022 election concerning Universal Collection in Broomfield, and directed staff to facilitate more robust community engagement and to prepare a study session to address the concerns and questions of Council and the public.

April 18, 2023, Council directed staff to pursue a Contracted Residential Waste Services (Universal Waste Collection) program including trash collection with volume-based/PAYT pricing and recycling services

bundled at no additional cost, and a Residential Recycling and Composting Ordinance focused on hauler licensing requirements. Council further directed staff on key elements of the program, including requirement of an opt-out fee for households, exploration of multiple options for organics collection, and that HOAs should participate in the program. [View the Study Session memo here.](#)

October 10, 2023, Council approved [Resolution No. 2023-123](#) directing staff to issue a “request for proposals” for City-Contracted Residential Waste Hauling Services.

April 16, 2024, and May 7, 2024, Executive Session for Legal Advice and Direction to Negotiators.

## **Boards and Commissions Prior Actions and Recommendations**

Staff is scheduled to present this item for ACES’ review on August 12, 2024. Staff’s presentation of this Council agenda item will include ACES’ recommendation.

## **Proposed Actions / Recommendations**

If Council desires to proceed with updating the Broomfield Municipal Code to allow for implementation of a Contracted Residential Waste Services program, the appropriate motion is:

That Ordinance No. 2242 be adopted on first reading and ordered published in full; and  
That a public hearing and second reading of the Ordinance be held on September 10, 2024, at 6 pm  
as allowed by City Council Procedures and Rules of Order.

This ordinance is only effective if City Council approves a contracted residential waste collection agreement with a licensed hauler on or before July 31, 2025.

## **Alternatives**

Do not approve Ordinance No. 2242, delaying the consideration of contracted residential waste services at this time, or make changes to the Broomfield Municipal Code as directed by City Council.

**Bold type** indicates new material to be added to the Broomfield Municipal Code  
~~Strikethrough type~~ indicates deletions from the Broomfield Municipal Code

## **Ordinance No. 2242**

An ordinance amending certain sections of Title 8 Chapter 4 of the Broomfield Municipal Code to implement City contracted waste collection services

### **Section 1. Recitals**

Whereas, the City and County of Broomfield (“Broomfield”) is committed to protecting the environment;

Whereas, Broomfield desires to encourage waste reduction to further the City’s waste diversion goals;

Whereas, the intent of this Ordinance is to: (1) reduce the volume of waste entering the waste stream and landfills, (2) encourage the recycling of certain discarded materials; (3) provide predictable collection service rates for residential community members, and (4) to protect the health, safety and welfare of the public.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

### **Section 2.**

Chapter 8-04, Garbage, of the Broomfield Municipal Code is hereby amended to read as follows:

8-04-010 - Definitions.

For the purposes of this chapter, the following words shall have the following meanings:

(A) *Garbage* means and includes any and all rejected or waste household food, offal, swill, kitchen refuse, and every accumulation of refuse, animal, fish, fowl, fruit, or vegetable matter, liquid or otherwise.

(B) *Hauler* means person or company that collects, transports or disposes residential refuse, rubbish, garbage, recyclable materials, trash and other discarded materials for another that is not merely incidental to the provision of other services for the customer, for a fee or for no fee, that is licensed by the city.

(C) *Homeowners’ association* means any residential covenant-controlled community which includes a lawfully constituted and operational board or

other similar entity which is empowered to enforce the community's recorded covenants and which has the power to impose assessments for its services which, if unpaid, may be made a lien on the property.

~~(B)~~ (D) *Person* means and includes all natural persons, associations of natural persons, partnerships, firms, or corporations acting in their own behalf or in a fiduciary or representative capacity.

(E) *Recyclable Materials* means those materials, goods and items deemed as single-stream recyclables by the city and county manager in the city contracted residential waste collection services agreement.

(F) *Residential Refuse* means any form of discarded material, junk, garbage, rubbish, trash, foreign substance, or debris intended for landfill disposal and recyclable materials taken by the city contracted residential refuse collection services hauler.

(G) *Residential refuse collection services* means the collection and transportation of residential refuse by the city contracted residential refuse collection services hauler from sources not otherwise exempt as provided in B.M.C. 8-04-026(C).

~~(C)~~ (H) *Rubbish* means and includes debris of all kinds, all accumulations of waste, refuse, and rejected animal, mineral, or vegetable matter, except garbage and manure.

~~(D)~~ (I) *Trash* means and includes ashes, waste paper, cans, bottles, broken glass and china, sawdust, leaves, weed and grass cuttings, shrubbery and tree trimmings, shavings, and packing material not including garbage, manure, or debris.

8-04-020 - Trash or garbage; deposit prohibited; receptacle required.

(A) It is unlawful to deposit or cause to be deposited in any street, public or private alley, vacant lot, or upon any premises within the city, any trash, rubbish, garbage, debris, manure, or any filthy, nauseous, or offensive matter of any kind.

(B) It is unlawful to deposit or cause to be deposited any **residential refuse**, trash, rubbish, garbage, or other material in a private, business, or commercial trash or garbage receptacle or container without the consent of the owner.

(C) The owner, occupant, tenant, or person in possession of each building or structure shall provide for a **residential refuse (as applicable)**, trash, rubbish, or garbage container or receptacle, and shall cause all trash, rubbish, **residential refuse (as applicable)** and garbage to be deposited and contained in such container or receptacle.



**8-04-025 - City residential refuse collection services.**

- A. The city's contracted residential refuse collection service hauler shall furnish residential refuse collection services as provided in this section and pursuant to the terms of the city's agreement with the licensed hauler to all residents within the city except those sources specifically excluded pursuant to B.M.C. 8-04-026. Single-stream recycling containers, for those persons subject to the city's contracted residential refuse collection services program, shall be provided by the city contracted hauler. Such containers shall be used only for collection of materials deemed recyclable materials.
- B. Residents using the city's contracted residential collection services hauler shall separate their recyclable materials from other discarded materials as directed by the city contracted hauler in the provided containers. Containers shall be placed in the street in front of the residence or alley adjacent to each residence on a schedule established by the city and communicated by the city contracted hauler.
- C. Bulk refuse material not collected as part of the city's collection services, as designated by the city, shall be removed by arrangement with the city's residential refuse collection services hauler, another city licensed hauler, or the resident in accordance with B.M.C. 8-04-027. Neither the city, nor its contractors or licensed haulers shall have any obligation to collect or transport any refuse not in a proper container or any containers not properly placed for collection.

**8-04-026 - Premises excluded from residential refuse collection services.**

Except as otherwise provided in this chapter, the city shall not provide residential refuse collection services to the following sources:

- A. All commercial or industrial establishments;
- B. Multi-unit residences containing eight (8) or more units; and
- C. Residents within homeowners' associations that provide curbside trash, garbage, debris, discarded material and recyclable materials collection services through a group account. Homeowners' associations must maintain an active waste contract and proof of an active contract must be provided to the city if requested, including a list of addresses covered by the group account. If the homeowners' association terminates such waste collection services to its residents, the homeowners' association shall provide written notice of termination to the city within 30 days.

**8-04-027 - Refuse, recycling and compostable materials hauling.**

Nothing in this chapter shall prohibit any person from contracting for or hauling their own refuse, recyclable and compostable materials provided such refuse and materials are collected and disposed of in conformity with all applicable city rules and regulations.

**8-04-028 - Residential refuse collection services fees.**

A. City council shall enter into a contract for residential refuse collection services with a licensed hauler which agreement shall establish the fees to be imposed for such services. If a residential refuse collection services customer elects to not use the services provided by the city's contracted waste hauler and is not otherwise exempt, such customer shall pay to the city the minimum level of solid waste service which fee shall be set and shall increase as otherwise provided for by the city's residential refuse collection services contract. The fees may be combined into one fee and shall be imposed on all city residents except those excluded from this chapter pursuant to B.M.C. 8-4-026. The fees shall be billed either by the city contracted hauler directly or in conjunction with the charge for city water and sewer services of the minimum service fee for those parties opting out of the city contracted residential refuse hauler's services and not excluded pursuant to B.M.C. 8-4-026.

B. The fees for waste services and the charge for city utility services are hereby declared to be parts of one debt to the city insofar as the same relate to any one resident, and the refusal or failure to pay any part of such debt for any period of service shall be sufficient cause for the city to avail itself of any or all remedies as set forth and in accordance with the provisions of Chapter 13-12 of the Broomfield Municipal Code; except that water service shall not be disconnected for non-payment of the residential refuse collection minimum service fees.

**8-04-030 - License; required; application.**

(A) No person shall engage in the business of collecting trash, rubbish, or garbage within the city without first making application to the city clerk for a license. Each application shall contain the following information:

- (1) Name, address, and phone number;
- (2) Doing business as;
- ~~(3) Public Utility Commission permit number;~~
- ~~(4)~~ (3) Number and description (weight, model, type, capacity, etc.) of vehicles used;
- ~~(5)~~ (4) Number of employees;

~~(6)~~ (5) References and Experience;

~~(7)~~ (6) Site of disposal of trash and waste material; and

~~(8)~~ (7) Applicant shall submit rate schedule with application and shall advise the city of any change in rates within thirty days after making such changes.

~~(B) Before there are any negotiations for a garbage collection license, the applicant must first obtain authority from the public utilities commission to operate such business within the corporate limits of the city.~~

8-04-040 - License; fee.

Upon approval of a garbage collection application, the city clerk shall issue the license upon the payment of a fee in the sum of \$150.00 per year, ~~and \$1.00 per sticker. The clerk shall issue a receipt together with stickers to be placed on the vehicles in a clearly legible location. Stickers shall not be transferable.~~ The licensees operating under this chapter shall pay the tax separately to the city clerk on or before August 1st of each year. All licenses issued pursuant to this chapter shall expire on the thirty-first of July of each year succeeding issuance, unless sooner revoked by the city council.

### Section 3.

This ordinance is only effective if city council approves a contracted residential waste collection agreement with a licensed hauler on or before July 31, 2025. The ordinance will only be published after the contracted residential waste collection agreement is approved by City Council. The effective date of the ordinance will be seven days after publication of final passage. If a contracted residential waste collection agreement with a licensed hauler is not approved on or before July 31, 2025, then this ordinance shall fail, will not be published in full, and will be of no force or effect.

Introduced and approved after first reading on August 13, 2024, and ordered published in full.

Introduced a second time and approved on September 10, 2024, and ordered published upon approval of a contracted residential waste collection agreement with a licensed hauler on or before July 31, 2025.

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*PWG*

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City and County Attorney



**Proposed Resolutions regarding Nonprofits Grant Program and Possible Distribution of Additional Funds from Property Tax and Grant Refunds**

Meeting	Agenda Group
Tuesday, August 13, 2024, 6:00 PM	Action Items Item: 7D
Presented By	
Dan Casey	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#)

As a result of increased property tax revenue (and returned unspent 2023 nonprofit grant funds), the 2024 Department of Human Services grant funding available to nonprofits has increased by \$503,870. This memo captures the funding proposals for the distribution of the additional funds in Resolutions 2024-100 and 2024-107, as well as addresses logistical changes to the process and policy in Resolution 2024-108.

### **Attachments**

[Memo for Property Tax - Nonprofits Grant Program and Property Tax Update.pdf](#)

[Resolution 2024-100 \(BCF\).pdf](#)

[Resolution 2024-107 \(Additional Funding\).pdf](#)

[Resolution 2024-108 \(Policy Update\).pdf](#)

## Summary

### [View Correspondence](#)

As a result of increased property tax revenue, the 2024 Department of Human Services (DHS) grant funding available to nonprofits has increased by \$477,963 from the initial amount of \$1,625,464 to \$2,103,427. Funding for these grants derives from 1.0 of the [2.25 Human Services Mill Levy Fund](#). The additional funding is one-time-only and is not expected to occur in future years. In addition, \$25,907 of 2023 unspent nonprofit grant funds was returned to DHS in early 2024. The final 2024 total amount for grant funding is \$2,129,334. \$1,625,464 has been distributed, leaving an amount of \$503,870 remaining. This memo captures the staff recommendations for the additional funds for Council's consideration as Resolution Nos. 2024-100 and 2024-107.

Additionally, this memo discusses logistical changes to the nonprofit process and policy. The updated policy for Council's consideration is Resolution No. 2024-108.

Proposal for the Distribution of the Additional Funds: \$503,870:

- \$20,000 Broomfield Community Foundation Grant Administration Fees
- The remaining \$483,870 would be used to provide funding to support identified critical needs in the community as detailed in the table on Pages 3-4. DHS recommends the additional funding be directed to the 2024 grantees as detailed below to support the community and bolster work identified in these nonprofit agencies' grant applications.

## Financial Considerations

As shown in the sources and uses of funds summary below, the project can be completed within the budgeted amount.

Sources and Uses of Funds	Amount
2024 Initial Funds Available - January (08-90100-53164)	\$1,625,464
2024 Additional Funds Available - July (08-90100-53164)	\$477,963
2023 Unspent Grant Funds returned to DHS (08-90100-53164)	\$25,907
2024 Initial Grant Funding Distribution	-\$1,625,464
2024 Additional Grant Funding Distribution	-\$503,870
Projected Balance	\$0

## Prior Council or Other Entity Actions

[Resolution No. 2023-19](#) - Council adopted the Amended Policy on Community Outlays for Public Purposes  
[Resolutions No. 2024-22, -23, and -24](#) - Council approved the 2024 grant funding to nonprofit agencies.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to proceed with allocating funding as specified below to the Broomfield Community Foundation, the appropriate motion is...

That [Resolution 2024-100](#) be adopted.

If Council desires to proceed with allocating funding as specified below in the Recommendation table, the appropriate motion is...

That [Resolution 2024-107](#) be adopted.

If Council desires to proceed with updating the policy on community outlays for public purposes, the appropriate motion is...

That [Resolution 2024-108](#) be adopted.

## Alternatives

See staff recommendation for additional funds below.

## Background

The City and County of Broomfield Department of Human Services (DHS) awards grant funding to eligible community nonprofits in accordance with the [policy on community outlays for public purposes](#) as set forth by City Council to support the health, welfare, and human services for Broomfield residents. Funding for these grants derives from 1.0 of the [2.25 Human Services Mill Levy Fund](#) for “[Developmentally Disabled & Mental Health](#)” budget line item (Page 75). For 2024, several factors have impacted the amount and method by which funding will be released in 2024 with modifications to future years:

- Increased 2024 Property Tax
- Case Management Redesign impacting the Community-Centered Board (CCB) for Intellectual and Developmental Disability (I/DD) services
- Partnership with the Broomfield Community Foundation

### Increased 2024 Property Tax -

As a result of increases in property tax revenue in 2024, it was anticipated that more funding would be available to supplement the 2024 Community Grants. In 2024, nonprofit grant funding totaling \$1,625,464 was distributed initially, pending a thorough assessment of the impact of state legislation on property taxes and final collections. In addition, \$25,907 of 2023 unspent nonprofit grant funds was returned to DHS in early 2024. The final 2024 amount is increased by \$503,870 (\$477,963 additional property tax revenue plus \$25,907 in 2023 unspent funds returned to DHS) for a total of \$2,129,334.

## Recommended use for Additional Funds

DHS recommends that the increase in available 2024 funding from actual property tax revenue and unspent 2023 grant funds be used in the following ways:

1. Broomfield Community Foundation (BCF): Grant Administration Fee

Provide grant administration funding to BCF in the amount of \$20,000 for work performed for the upcoming 2025 grants administration process. This recognizes the costs incurred by BCF in advance of the January City Council Meeting that approves and appropriates grant awards to applicant agencies. Utilizing a portion of the additional 2024 nonprofit funds would allow the Department to transition to an annual administration funding model that would fund BCF timely for work performed to notice the grant opportunities, receive and review applications, and make funding recommendations to City Council for grant awards in January of each year, and execute contracts with Tier 1 and Tier 2 awardees. This change would help fund BCF as part of the grant administration team.

2. For the distribution of the remaining \$483,870 in funds, DHS “Funding Recommendation” is detailed below.

## Funding Recommendation

DHS thoroughly assessed a variety of funding options and proposes that funding be provided to support critical needs in the community that have been identified by the Department as specified in the table below. The Department recommends the additional funding be directed to the following 2024 grantees to support the community and bolster work identified in their original 2024 grant application, but not to exceed the original request:

1. Almost Home - additional \$64,016. Almost Home provides services and support to Broomfield individuals experiencing homelessness.
2. Broomfield Community Foundation - additional \$8,750. BCF facilitates the Broomfield Community Services Network which convenes nonprofit organizations to support the community-based organization network and nonprofit ecosystem for capacity building and infrastructure development.
3. Broomfield FISH - additional \$100,000. FISH serves as the only Family Resource Center in Broomfield and provides services to reduce food insecurity and bolster housing support.
4. A&I Avenues (merger with Imagine [former Community Centered Board] and Adult Care Management, Inc) - additional \$39,348. A&I Avenues is the newly formed Case Management Agency for individuals with developmental and intellectual disabilities.
5. Mental Health Partners (MHP) - additional \$125,000. MHP serves as the Regional Accountable Entity (RAE) assigned mental health provider.
6. Refuge - additional \$16,500. The Refuge is the primary provider of day shelter services to those experiencing homelessness. They are a core partner in the annual Point-in-Time count and provide showers, food, and other resources for individuals experiencing homelessness.

The remaining funds would be proportionally distributed across the rest of the Tier 2 and Tier 3 organizations.



Recommendation				
Funding Method	Agency			Request
2025 Administration Fee	Broomfield Community Foundation			\$20,000
<b>Fund Strategic Community Needs</b> <ul style="list-style-type: none"> <li>Behavioral/Mental Health Services</li> <li>Family Resource Center</li> <li>Housing</li> <li>Intellectual/Developmental Disabilities Community Centered Board/Case Management Agency</li> <li>Broomfield Community Services Network</li> </ul>	<b>Fully funded Agencies</b>	<b>2024 Request</b>	<b>2024 Award</b>	<b>2024 Additional Funding (Difference Award - Request)</b>
	Almost Home	\$128,016	\$64,000	\$64,016
	Broomfield Community Foundation (Broomfield Community Services Network)	\$25,000	\$16,250	\$8,750
	Broomfield FISH	\$300,000	\$200,000	\$100,000
	Imagine (CCB), effective 7/1/24 A & I Avenues for Case Management Agency	\$328,312	\$288,964	\$39,348
	Mental Health Partners	\$425,000	\$300,000	\$125,000
	Refuge	\$66,000	\$49,500	\$16,500
	Subtotal	\$1,272,328	\$918,714	\$353,614
<b>Proportionally Distribute Increase in Funds at 28.99% of 2024 Awards across remaining Tier 2/3 Agencies</b>	<b>Proportionally funded Agencies</b>	<b>2024 Request</b>	<b>2024 Award</b>	<b>28.99% Increase to 2024 Award</b>
	A Precious Child	\$150,000	\$60,000	\$17,396
	Bal Swan Children's Center	\$60,000	\$45,000	\$13,047
	Clinica Family Health Services	\$50,000	\$32,500	\$9,423
	Colorado Safe Parking Initiative	\$137,824	\$30,000	\$8,699
	Community Food Share	\$60,000	\$45,000	\$13,047
	Community Reach Center	\$50,000	\$10,000	n/a (returned 2024 funds)
	F.R.I.E.N.D.S.	\$100,000	\$65,000	\$18,846
	Imagine (Program Approved Service Agency [PASA])	\$120,000	\$78,000	\$22,615
	Ralston House	\$65,000	\$48,750	\$14,135
	Safehouse Progressive Alliance for Nonviolence	\$40,000	\$30,000	\$8,699
	Senior Resources of Broomfield, Inc.	\$42,000	\$15,000	\$4,349
	Subtotal	\$874,824	\$459,250	\$130,256
	<b>Total</b>			<b>\$503,870</b>

## Policy Change Requests

The Department has several amendments to the [policy on community outlays for public purposes](#) to ratify the change of Broomfield's Community Centered Board (CCB) to a Case Management Agency and the partnership between the Department and the Broomfield Community Foundation in the administration of the Department's nonprofit grants. In addition, the Department is launching a proposed pilot for the issuance of nonprofit grants starting in 2025 and incorporation in the policy amendment request.

- **Community-Centered Board Case Management Redesign**  
Effective 7/1/24, per state legislation, [Imagine](#) will no longer be Broomfield's Community-Centered Board (CCB). Because of [Case Management Redesign](#), Imagine has merged with [Adult Care Management, Inc.](#) to create "A and I Avenues" that will serve as the Case Management Agency (CMA) to replace Broomfield's CCB. Imagine's Program Approved Service Agency (PASA) services will continue through Imagine and still be part of the competitive grant process. The [policy on community outlays for public purposes](#) will need to be modified to reflect this change.
- **Broomfield Community Foundation Partnership**  
DHS has partnered with the Broomfield Community Foundation (BCF) beginning with the 2023 Nonprofit (NP) grant cycle to distribute funds to community nonprofits. In 2024, BCF administered Tier 1 (up to \$25K) grant funds and DHS administered Tier 2 (\$25K up to \$200K) and Tier 3 (over \$200K). For 2025 funding, BCF and DHS will partner to score and make funding decisions for Tier 2 while BCF will administer and manage both Tier 1 and 2 awards and reporting. The Tier 2 lower limit of the range will shift from \$25K to \$50K to match Procurement Manual Signature Authority and better fit the profiles of Tier 2 applicants. The top of the range will remain the same at up to \$200K. Tier 2 scoring and funding decisions will be a collaborative effort between BCF and DHS.
- **Proposed Nonprofit Grant Pilot**  
DHS is proposing a new structure for the funding of the Broomfield Community Services Network and up to four Tier 3 organizations for the following four years (2025-2028) that would require a policy amendment. DHS is interested in piloting stable, baseline funding awards that would allow for a longer-term investment in agencies and remove those awarded agencies from a year-over-year grant application process. The Department would like to utilize a method (yet to be determined) to identify critical community, human services-related needs and enter into base plus three-year agreements with agencies aligned with addressing those critical needs. The Department believes that stable funding, depending upon funding availability, would allow grantee agencies to have a more strategic impact. By including these agencies in line item funding, efforts will be streamlined for service delivery and funding approval.

The Department envisions:

- An agency baseline amount would only fluctuate based on the funding available year over year by an equal percentage of overall funding fluctuation. For example, if the funding available for the nonprofit grants increased by 3%, the baseline funding would be increased by 3% to each pilot-awarded agency. Decreases would be applied in a similar manner.
- A predetermined percentage of the available nonprofit funds would be set aside for this pilot. The remainder of the nonprofit funding would be awarded through the Department's existing awarding methodology.
- The agencies included in this pilot would participate in an initial grant application process as part of the Department's 2025 nonprofit grant process.



## Policy on Community Outlays for Public Purposes

*Bold type indicates new material to be added to the Policy.*

*Dashes through words indicate deletions from the Policy.*

WHEREAS, there are numerous local community organizations that provide health and human services as well as community cultural services that benefit the residents of the City and County of Broomfield; and

WHEREAS, each year the City and County of Broomfield receives numerous requests for grant funds from these community organizations to provide services or programs that serve public purposes to advance the health, safety, and welfare of Broomfield residents or to enrich the cultural, scientific, and artistic opportunities of Broomfield residents; and

WHEREAS, Broomfield City Council desires to have in place a policy for handling requests from community organizations and entities that is uniform and fair, and provides for thoughtful, comprehensive, and consistent review of these requests for funding by both health and human services related organizations and cultural, scientific, and arts groups; and

WHEREAS, the State of Colorado designates a **Case Management Agency (CMA)** ~~Community-Centered Board (CCB)~~ for the City and County of Broomfield as a single entry point-into local, state and federally funded programs for people with **intellectual and** developmental disabilities; and

WHEREAS, the State of Colorado designates a Regional Accountability Entity (RAE) for the purposes of providing health care through Medicaid for the residents of the City and County of Broomfield; and

WHEREAS, the Department of Human Services (DHS) currently has a grant committee that annually reviews requests and awards discretionary non-profit funding through a formal, competitive application review process; and

WHEREAS, Broomfield currently has an Arts, Culture and Science Funding Program whereby discretionary funds are awarded to community organizations ~~on a competitive basis according to the criteria agreed upon by the Broomfield Arts, History and Cultural Council~~ to support arts, culture, and science programs offered to the Broomfield community, ~~which program is administered by the Broomfield County Cultural Council~~; and

WHEREAS, the Scientific and Cultural Facilities District (SCFD) awards funds to local organizations based upon criteria established by statute and the Broomfield Municipal Code; and

WHEREAS, it has been the practice of the City and County of Broomfield to allocate in its budget funds for community outlays for both health and human services purposes and cultural, artistic, and scientific purposes,

NOW, THEREFORE, the policy of the City and County of Broomfield for community outlays for public purposes is established as follows:

### Human Services Grants

1. Agencies designated as **Case Management Agencies (CMA)** ~~Community-Centered Boards~~ will have their funding request reviewed directly by City Council as part of the City's annual budget process.
2. **Agencies identified as providing critical community, human services-related needs as determined by DHS will provide an initial application to have their funding request reviewed directly by DHS Management and where applicable, enter into base plus three-year agreements and be provided**

with direct funding. This will include the Broomfield Community Foundation for the Broomfield Community Services Network because of the unique role it serves in the community and is facilitated by the Foundation.

3. All other requests for grants or award of funds for the public purposes of supporting the health, welfare, and human services for the residents of the City and County of Broomfield shall be directed to DHS.
  - a. **The Broomfield Community Foundation (BCF) will assist in Grant Administration. Terms and conditions as well as associated costs will be formalized in an annual contract and subsequent amendment(s) in alignment with City and County of Broomfield procurement policy. BCF will be paid in advance of the grant application cycle.**
4. DHS shall continue their annual process for reviewing these requests for funding through a formal, competitive application review process. Proposals should be evaluated for the ability to augment existing programs or provide a service that is needed in the community that is not already filled by DHS or another organization in the community. These grants shall be limited to organizations that provide services that benefit City and County of Broomfield residents. Other criteria that should be used to evaluate proposals for these grant funds include:
  - a. Services to individuals should be provided in a cost- effective and efficacious manner.
  - b. Services are unique and distinct, specifically addressing a gap or need within the community.
  - c. Agency has a quality assurance component.
  - d. Agency has a history of quality service provision and maintains a strong foundation for providing services in the future.
  - e. Services align with City and County and Health and Human Services priorities.
5. Agencies receiving awards should be required to measure their success and submit periodic reports to DHS on their performance and use of funds.

#### Cultural Arts and Scientific Grants

6. Requests for grant funding for arts, cultural, and science programs or organizations shall be directed to the Broomfield **Arts, History and Cultural Council** which shall review these grant requests under the Arts, Culture, and Science Funding Program and/or the criteria for awarding SCFD funds, as may be appropriate. **When As**-applicable, the Broomfield **Arts, History and Cultural Council** will make recommendations to City Council for award of these funds.

#### Funding Considerations

7. All awards of grant funds to community organizations for public purposes are subject to the availability of funds for community outlays within the City and County of Broomfield's adopted budget, as may be amended from time to time. All awards of DHHS funds pursuant to this policy are expected to be within the allocated budget for community outlays. All recommendations by the Broomfield ~~County~~ **Arts, History and Cultural Council** are expected to be within the allocated budgets for the Arts, Culture, and Science Funding Program and for the SCFD program.

# RESOLUTION NO. 2024-100

A resolution approving use of additional 2024 Department of Human Services nonprofit grant funding.

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Recitals.

Whereas, as a result of increased property tax revenue, the 2024 Department of Human Services (DHS) grant funding available to nonprofits has increased by \$477,963; and

Whereas, in addition, \$25,907 of 2023 unspent nonprofit grant funds was returned to DHS in early 2024; and

Whereas, the final 2024 total amount for grant funding has increased from the initial amount of \$1,625,464 to \$2,103,427; and

Whereas, \$1,625,464 of 2024 grant funding has been distributed, leaving an amount of \$503,870 remaining due to the additional funds; and

Whereas, Council hereby resolves to provide direction on the use of the additional funds as set forth in this resolution.

## Section 1.

Additional 2024 nonprofit grant funding shall be allocated by providing Twenty-Thousand dollars (\$20,000.00) to the Broomfield Community Foundation for 2025 Grant Administration Services. City Council authorizes the City Manager and/or the Director of the Department of Human Services to sign contract documents in accordance with this funding decision.

## Section 2.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024

The City and County of Broomfield, Colorado

Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

# RESOLUTION NO. 2024-107

A resolution approving use of additional 2024 Department of Human Services nonprofit grant funding.

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Recitals.

Whereas, as a result of increased property tax revenue, the 2024 Department of Human Services (DHS) grant funding available to nonprofits has increased by \$477,963; and

Whereas, in addition, \$25,907 of 2023 unspent nonprofit grant funds was returned to DHS in early 2024; and

Whereas, the final 2024 total amount for grant funding has increased from the initial amount of \$1,625,464 to \$2,103,427; and

Whereas, \$1,625,464 of 2024 grant funding has been distributed, leaving an amount of \$503,870 remaining due to the additional funds; and

Whereas, Council hereby resolves to provide direction on the use of the additional funds as set forth in this resolution.

## Section 1.

Additional 2024 nonprofit grant funding shall be allocated as set forth in the table below. City Council authorizes the City Manager and/or the Director of the Department of Human Services to sign contract documents in accordance with these funding decisions.

Funding Method	Agency			Request
2025 Administration Fee	Broomfield Community Foundation			\$20,000
Fund Strategic Community Needs <ul style="list-style-type: none"><li>Behavioral/Mental Health Services</li><li>Family Resource Center</li></ul>	Fully funded Agencies	2024 Request	2024 Award	2024 Additional Funding (Difference Award - Request)



<ul style="list-style-type: none"> <li>Housing</li> <li>Intellectual/Developmental Disabilities Community Centered Board/Case Management Agency</li> <li>Broomfield Community Services Network</li> </ul>	Almost Home	\$128,016	\$64,000	\$64,016
	Broomfield Community Foundation (Broomfield Community Services Network)	\$25,000	\$16,250	\$8,750
	Broomfield FISH	\$300,000	\$200,000	\$100,000
	Imagine (CCB), effective 7/1/24 A & I Avenues for Case Management Agency	\$328,312	\$288,964	\$39,348
	Mental Health Partners	\$425,000	\$300,000	\$125,000
	Refuge	\$66,000	\$49,500	\$16,500
	Subtotal	\$1,272,328	\$918,714	\$353,614
Proportionally Distribute Increase in Funds at 28.99% of 2024 Awards across remaining Tier 2/3 Agencies	<b>Proportionally funded Agencies</b>	<b>2024 Request</b>	<b>2024 Award</b>	<b>28.99% Increase to 2024 Award</b>
	A Precious Child	\$150,000	\$60,000	\$17,396
	Bal Swan Children's Center	\$60,000	\$45,000	\$13,047
	Clinica Family Health Services	\$50,000	\$32,500	\$9,423
	Colorado Safe Parking Initiative	\$137,824	\$30,000	\$8,699
	Community Food Share	\$60,000	\$45,000	\$13,047
	Community Reach Center	\$50,000	\$10,000	n/a (returned 2024 funds)
	F.R.I.E.N.D.S.	\$100,000	\$65,000	\$18,846
	Imagine (Program Approved Service Agency [PASA])	\$120,000	\$78,000	\$22,615
	Ralston House	\$65,000	\$48,750	\$14,135
	Safehouse Progressive Alliance for Nonviolence	\$40,000	\$30,000	\$8,699
	Senior Resources of Broomfield, Inc.	\$42,000	\$15,000	\$4,349
	Subtotal	\$874,824	\$459,250	\$130,256

## Section 2.

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

# RESOLUTION NO. 2024-108

A resolution approving the 2024 amended policy on community outlays for public purposes.

Be it resolved by the City Council of the City and County of Broomfield, Colorado:

**Section 1.**

The 2024 Amendment Policy on Community Outlays for Public Purposes, attached hereto, is hereby adopted.

**Section 2.**

This resolution is effective upon its approval by the City Council.

Approved on August 13, 2024

The City and County of Broomfield, Colorado

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Mayor

Attest:

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Office of the City and County Clerk

Approved as to form:

*NCR*

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City and County Attorney

## Policy on Community Outlays for Public Purposes

*Bold type indicates new material to be added to the Policy.*

*Dashes through words indicate deletions from the Policy.*

WHEREAS, there are numerous local community organizations that provide health and human services as well as community cultural services that benefit the residents of the City and County of Broomfield; and

WHEREAS, each year the City and County of Broomfield receives numerous requests for grant funds from these community organizations to provide services or programs that serve public purposes to advance the health, safety, and welfare of Broomfield residents or to enrich the cultural, scientific, and artistic opportunities of Broomfield residents; and

WHEREAS, Broomfield City Council desires to have in place a policy for handling requests from community organizations and entities that is uniform and fair, and provides for thoughtful, comprehensive, and consistent review of these requests for funding by both health and human services related organizations and cultural, scientific, and arts groups; and

WHEREAS, the State of Colorado designates a **Case Management Agency (CMA)** ~~Community Centered Board (CCB)~~ for the City and County of Broomfield as a single entry point-into local, state and federally funded programs for people with **intellectual and** developmental disabilities; and

WHEREAS, the State of Colorado designates a Regional Accountability Entity (RAE) for the purposes of providing health care through Medicaid for the residents of the City and County of Broomfield; and

WHEREAS, the Department of Human Services (DHS) currently has a grant committee that annually reviews requests and awards discretionary non-profit funding through a formal, competitive application review process; and

WHEREAS, Broomfield currently has an Arts, Culture and Science Funding Program whereby discretionary funds are awarded to community organizations ~~on a competitive basis~~ **according to the criteria agreed upon by the Broomfield Arts, History and Cultural Council** to support arts, culture, and science programs offered to the Broomfield community, ~~which program is administered by the Broomfield County Cultural Council~~; and

WHEREAS, the Scientific and Cultural Facilities District (SCFD) awards funds to local organizations based upon criteria established by statute and the Broomfield Municipal Code; and

WHEREAS, it has been the practice of the City and County of Broomfield to allocate in its budget funds for community outlays for both health and human services purposes and cultural, artistic, and scientific purposes,

NOW, THEREFORE, the policy of the City and County of Broomfield for community outlays for public purposes is established as follows:

### Human Services Grants

1. Agencies designated as **Case Management Agencies (CMA)** ~~Community-Centered Boards~~ will have their funding request reviewed directly by City Council as part of the City's annual budget process.
2. Agencies identified as providing critical community, human services-related needs as determined by DHS will provide an initial application to have their funding request reviewed directly by DHS Management and where applicable, enter into base plus three-year agreements and be provided with direct funding. This will include the Broomfield Community Foundation for the Broomfield Community Services Network because of the unique role it serves in the community and is facilitated by the Foundation.
3. All other requests for grants or award of funds for the public purposes of supporting the health, welfare, and human services for the residents of the City and County of Broomfield shall be directed to DHS.
  - a. The Broomfield Community Foundation (BCF) will assist in Grant Administration. Terms and conditions as well as associated costs will be formalized in an annual contract and subsequent amendment(s) in alignment with City and County of Broomfield procurement policy. BCF will be paid in advance of the grant application cycle.
4. DHS shall continue their annual process for reviewing these requests for funding through a formal, competitive application review process. Proposals should be evaluated for the ability to augment existing programs or provide a service that is needed in the community that is not already filled by DHS or another organization in the community. These grants shall be limited to organizations that provide services that benefit City and County of Broomfield residents. Other criteria that should be used to evaluate proposals for these grant funds include:
  - a. Services to individuals should be provided in a cost- effective and efficacious manner.
  - b. Services are unique and distinct, specifically addressing a gap or need within the community.
  - c. Agency has a quality assurance component.
  - d. Agency has a history of quality service provision and maintains a strong foundation for providing services in the future.
  - e. Services align with City and County and Health and Human Services priorities.
5. Agencies receiving awards should be required to measure their success and submit periodic reports to DHS on their performance and use of funds.

#### Cultural Arts and Scientific Grants

6. Requests for grant funding for arts, cultural, and science programs or organizations shall be directed to the Broomfield **Arts, History and Cultural Council** which shall review these grant requests under the Arts, Culture, and Science Funding Program and/or the criteria for awarding SCFD funds, as may be appropriate. **When As** applicable, the Broomfield **Arts, History and Cultural Council** will make recommendations to City Council for award of these funds.

#### Funding Considerations

7. All awards of grant funds to community organizations for public purposes are subject to the availability of funds for community outlays within the City and County of Broomfield's adopted budget, as may be amended from time to time. All awards of

DHHS funds pursuant to this policy are expected to be within the allocated budget for community outlays. All recommendations by the Broomfield ~~County~~ **Arts, History and Cultural Council** are expected to be within the allocated budgets for the Arts, Culture, and Science Funding Program and for the SCFD program.