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Tuesday, November 12, 2024, 6:00 PM

One DesCombes Drive

Broomfield, CO 80020

[View Correspondence](#)

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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

2A. Proclamation - Small Business Saturday November 30, 2024

— Proclamation

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## 3. Councilmember Reports

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## 4. Public Comment

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## 5. Reports

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## 6. Consent Items

6A. Approval of Minutes

Approval of minutes from the October 22, 2024 Regular City Council Meeting

6B. Proposed Resolution Approving an Agreement with Axon Enterprises, Inc for replacement tasers and body worn cameras

— Resolution No. 2024-133 Approving an Agreement with Axon Enterprises, Inc. for the Replacement of Tasers, Body Worn Cameras, and Redaction Software

6C. Proposed Resolutions for Sunridge Lift Station Construction Agreement

— Resolution 2024-152 Amendment Two to the Construction Manager/General Contractor (CM/GC) with Moltz Construction for Construction of the Sunridge Lift Station

— Resolution 2024-153 with Burns & McDonnell for a Design Services Agreement for the Sunridge Lift Station

6D. Proposed Resolution for an IGA with Adams County Community Corrections Program

— Resolution 2024-141 IGA with Adams County and Broomfield's Appointments to the Community Corrections Board

6E. Proposed Resolution Approving the 2024 Amendment to City Manager's Employment Agreement

— Resolution No. 2024-109 approving the 2024 amendment to employment agreement between the City and County of Broomfield and the City and County Manager

6F. Proposed Resolution for Metro Fibernet LLC Fiber Optic Master License Agreement

— Resolution 2024-51 approving a Master License Agreement by and between the City and County of Broomfield and Metro Fibernet, LLC

- 6G. BOE Proposed Resolution for Action on Abatement Petitions
  - Resolution 2024-117-BOE - Action on Abatement Petitions
- 6H. Ordinance Wadsworth Station Reimbursement Assessment District - First Reading
  - Ordinance No. 2250 establishing the Wadsworth Station Reimbursement Assessment District and Assessing the Benefitted Property Therein
- 6I. Ordinance for Tree Preservation - First Reading
  - Ordinance No. 2240 An ordinance to add Chapter 17-71 to the Broomfield Municipal Code to establish Tree Preservation and Mitigation Measures During Land Development and Redevelopment - 1st Reading
- 6J. Proposed Resolution Ratifying Broomfield's Election to Participate in Group Financing on Windy Gap Completion Costs
  - Resolution No. 2024-142 Ratifying Participation in Group Financing for Windy Gap Firing Project Completion Costs
- 6K. Proposed BURA Resolution Approving a Remarketing Agreement Concerning BURA Bonds
  - Resolution No. 2024-155-UR Remarketing Agreement Concerning BURA Bonds

## 7. Action Items

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- 7A. Public Hearing - Village of West View PUD Amendment, Final Plat, SDP and Comp Plan Amendment, Reimbursement Agreement
  - To be reviewed concurrently with Item 7B
  - Resolution No. 2024-158 approving the Great Western Park Planned Unit Development Plan Amendment No. 6 and Great Western Park Filing No. 7 Lots 1 and 2 (Village of West View) Final Plat, Site Development Plan and Comprehensive Plan Amendment
  - Resolution No. 2024-163 approving an Intergovernmental Agreement between Broomfield and the City of Westminster relating to Village of West View Simms Street Improvement Cash-in-Lieu Payment
  - Ordinance No. 2259 approving a Sales and Use Tax Reimbursement Agreement for the Village at West View
- 7B. Ordinance Village of Westview Sales Tax Sharing - First Reading
  - To be reviewed concurrently with Item 7A
- 7C. Public Hearing - Ordinance Approving a Reimbursement Agreement for Funds Advanced for Drainage Improvements to Nissen Channel - Second Reading
  - Ordinance No. 2256 approving a Reimbursement Agreement for Funds Advanced for Drainage Improvements to Nissen Channel
- 7D. Public Hearing - Ordinance for Jefferson Parkway Withdrawal - Second Reading
  - Council's consideration of approval of an ordinance, on second reading, regarding a delayed land transfer and related to Broomfield's withdrawal from the Jefferson Parkway Public Highway Authority
  - Ordinance No. 2251 Conveyance Property to JPPHA for 2nd Reading
- 7E. Public Hearing - Ordinance for Residential Occupancy Second Reading
  - Ordinance No. 2241 to amend the Broomfield Municipal Code, Title 17, to remove occupancy restrictions based on familial status

## 8. Mayor and Councilmember Requests for Future Action

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## 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.



*Date Posted: November 6, 2024*



### A. Proclamation - Small Business Saturday November 30, 2024

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Petitions and Communications Item: 2A.
Presented By	
Jeffrey Schreier	
Community Goals	

## Overview

[View Correspondence](#)

[View Presentation](#)

Small Business Saturday is a national program encouraging customers to support small businesses in communities across the nation. One of the primary themes is for shoppers to patronize their local small business' retailers and restaurants on the Saturday after Thanksgiving, one of the busiest shopping days of the year. This year, Small Business Saturday falls on November 30, 2024. The City and County of Broomfield, Colorado, celebrates our local small businesses and the contributions they make to our local economy and community.

### **Attachments**

[Memo -Proclamation -Small Business Saturday 11-30-2024.pdf](#)

[Proclamation Small Business Saturday in Broomfield .pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

Small Business Saturday is a national program encouraging customers to support small businesses in communities across the nation. One of the primary themes is for shoppers to patronize their local small business' retailers and restaurants on the Saturday after Thanksgiving, one of the busiest shopping days of the year. This year, Small Business Saturday falls on November 30, 2024. The City and County of Broomfield, Colorado, celebrates our local small businesses and the contributions they make to our local economy and community. Attached is a proclamation declaring November 30, 2024, as Small Business Saturday in Broomfield.

To recognize Small Business Week the Economic Vitality Department is hosting and advertising the Local Holiday Deals webpage, dedicated to listing local retail and meal deals that shoppers can find at participating businesses.

## Financial Considerations

N/A

## Prior Council or Other Entity Actions

N/A

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

N/A

## Alternatives

N/A



# Proclamation

## PROCLAMATION DECLARING NOVEMBER 30, 2024, AS SMALL BUSINESS SATURDAY

- WHEREAS, *The City and County of Broomfield celebrates our local small businesses and the contributions they make to our local economy; and*
- WHEREAS, *The City and County of Broomfield continues to support our small businesses through efforts like our Enhance Broomfield Forgivable Loan, Entrepreneur Microgrant, Eat Local Restaurant Guide, topical workshops, and Local Holiday Deals Webpage; and*
- WHEREAS, *While Small Business Saturday is endorsed by a number of public and private entities, like the Small Business Administration, public and customer awareness is still increasing; and*
- WHEREAS, *Small Business Saturday is a critical day for many small businesses, as it increases awareness of local shopping and dining options and it accounted for \$17 billion in spending on Small Business Saturday last year; and*
- WHEREAS, *American Express notes that 59% of respondents to the 2023 Consumer Insights Survey said they shopped or ate at a small, independently owned retailer or restaurant on Small Business Saturday in 2023; and*
- WHEREAS, *Research found that 68 dollars of every one hundred dollars spent at a small business in the U.S. stays in the local economy and that every one hundred dollars spent at small businesses creates an additional 48 dollars in local business activity; and*
- WHEREAS, *The City and County of Broomfield wishes to encourage all residents to support our local businesses that create jobs, boost our local economy, and make our community the thriving place we enjoy.*

NOW, THEREFORE, I, Guyleen Castriotta, Mayor of the City and County of Broomfield, do hereby declare and proclaim November 30, 2024 as:

### **SMALL BUSINESS SATURDAY IN BROOMFIELD**

*In witness whereof, I hereunto set my hand and official seal on this the \_\_\_\_ day of \_\_\_\_\_ 2024.*

\_\_\_\_\_  
Guyleen Castriotta  
Mayor



# City and County of Broomfield

## City Council Regular Meeting

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### Approval of Minutes

Approval of minutes from the October 22, 2024 Regular City Council Meeting

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items      Item: 6A.
Community Goals	

### Summary

Approval of Minutes for the Regular City Council Meeting of October 22, 2024.

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### Attachments

[Minutes 10-22-2024 For Approval.pdf](#)

# Minutes for the City Council Regular Meeting

One DesCombes Drive, Broomfield, CO 80020

October 22, 2024, 6:00 PM - October 22, 2024, 7:36 PM

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

- **Guyleen Castriotta**, Mayor
- **Laurie Anderson**, Ward 4
- **Todd Cohen**, Ward 5
- **Paloma Delgadillo**, Ward 2
- **Heidi Henkel**, Ward 5
- **Bruce Leslie**, Ward 4 (attended remotely)
- **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 (joined the meeting at 6:37 p.m.)
- **Laurie Goldstein**, Authority Member - BURA (joined the meeting at 6:20 p.m.)

**Also Present:**

- **Jennifer Hoffman**, City and County Manager
- **Anna Bertanzetti**, Interim Deputy City and County Manager
- **Dan Casey**, Deputy City and County Manager
- **Don Davis**, Deputy City and County Manager
- **Nancy Rodgers**, City and County Attorney
- **Michelle Parker**, Deputy City and County Clerk and Recorder

## 1. Meeting Commencement

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1A. Pledge of Allegiance- 6:00 PM

1B. Review and Approval of Agenda- 6:02 PM

## 2. Petitions and Communications

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2A. Proclamation Declaring November 2024 as Lung Cancer Awareness Month- 6:03 PM

## 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 - 3rd Quarter 2024- 6:17 PM

## 6. Consent Items- 6:18 PM

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Councilmember Henkel moved to approve Consent Agenda Items 6A, 6B, and 7E. The motion was seconded by Councilmember Nguyen, and passed 9-0. Councilmember Ward was absent.

6A. Approval of Minutes

6B. Proposed Resolution for approval of the Revised Emergency Operations Plan (EOP)

**7E. Proposed Ordinance Delegating Penalty Assessment to BPHE for violation of the Food Protection Act. - First Reading**

## 7. Action Items

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7A. Proposed Revised 2024 Budget and 2025 Budget; Second Reading of Water / Wastewater Enterprise Ordinances- 6:20 PM

Public Hearing was opened at 6:21 PM and closed at 6:51 PM

Items 7A, 7B, and 7C were reviewed concurrently.

Councilmember Ward moved to approve Resolution No. 2024-147 Approving the 3rd Amendment to the 2024 Broomfield Budget. The motion was seconded by Councilmember Nguyen, and passed 10-0.

Councilmember Ward moved to approve Resolution No. 2024-149 Approving the 2025 Broomfield Budget. The motion was seconded by Councilmember Nguyen.

Councilmember Marsh-Holschen moved to amend the motion to add \$300,000 to the 2025 CIP budget for a park shelter in Country Vista Park. Councilmember Nguyen seconded the motion to amend, which failed 3-7. Councilmembers Anderson, Cohen, Delgadillo, Henkel, Lim, Ward, and Mayor Pro Tem Shaff voted No.

The original motion to approve Resolution No. 2024-149 passed 10-0.

Councilmember Ward moved to approve Ordinance No. 2253 Amending Water, Sewer, and Reclaimed Water Fees on second reading. The motion was seconded by Councilmember Nguyen, and passed 8-2. Councilmembers Henkel and Marsh-Holschen voted No.

Councilmember Ward moved to approve Ordinance No. 2255 Creating Stormwater Enterprise and Setting Stormwater Service Charges on second reading. The motion was seconded by Councilmember Nguyen, and passed 8-2. Councilmembers Henkel and Marsh-Holschen voted No.

### **7B. BURA Proposed Revised 2024 Budget and 2025 Budget - 7:13 PM**

*(Broomfield Urban Renewal Authority - BURA)*

Items 7A, 7B, and 7C were reviewed concurrently.

The meeting of the Broomfield Urban Development Authority (BURA) was called to order.

Authority Member Delgadillo moved to approve Resolution No. 2024-148-UR Approving the 3rd Amendment to the 2024 BURA Budget. Seconded by Authority Member Ward, the motion passed 11-0. Authority Member Law-Evans was absent.

Authority Member Marsh-Holschen moved to approve Resolution No. 2024-150-UR Approving the 2025 BURA Budget. Seconded by Authority Member Nguyen, the motion passed 11-0. Authority Member Law-Evans was absent.

### **7C. ALID Proposed 2025 Budget - 7:16 PM**

*(Arista Local Improvement District)*

Items 7A, 7B, and 7C were reviewed concurrently.

The meeting of the Arista Local Improvement District (ALID) was called to order.

Authority Member Delgadillo moved to approve Resolution No. 2024-151-AID Approving the 2025 ALID Budget. The motion was seconded by Authority Member Ward, and passed 10-0.

### **7D. Proposed Resolution Establishing the Utility Rate Assistance Fund (URAF) Program- 7:17 PM**

Councilmember Ward moved to approve Resolution No. 2024-165 Establishing the Utility Rate Assistance Fund (URAF) Program to Provide Annual Utility Payment Assistance to Income Qualified Households. The motion was seconded by Councilmember Nguyen, and passed 9-1.

Councilmember Anderson voted No.

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

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## **9. Adjournment**

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# City and County of Broomfield

## City Council Regular Meeting

### Proposed Resolution Approving an Agreement with Axon Enterprises, Inc for replacement tasers and body worn cameras

Meeting	Agenda Group	
Tuesday, November 12, 2024, 6:00 PM	Consent Items	Item: 6B.
Presented By		
Enea Hempelmann, Chief of Police		
Community Goals		
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community		

### Overview

[View Correspondence](#)

[View Presentation](#)

The Broomfield Police Department is seeking Council approval to purchase replacement Tasers, body worn cameras (BWC), and redaction software from Axon Enterprise, Inc. for officers. If approved, this request will authorize the replacement of the current Taser 7 with the Taser 10 and current BWC 3 with BWC 4.

### Attachments

[Council Memo for Taser\\_BWC Replacement and Redaction Software.pdf](#)

[Resolution 2024-133-with Axon for Taser\\_BWC Replacement and Redaction Software.pdf](#)

[Final Agreement between Axon and Broomfield PD with Axon Signature.pdf](#)

Memo for: Taser, Body Worn Camera Replacement, and Redaction Software  
Prepared By: Enea Hempelmann, Chief of Police  
Mark Goodell, Deputy Chief of Police  
Kurt Wederquist, Commander

## Summary

### [View Correspondence](#)

The Broomfield Police Department is seeking Council approval to purchase replacement Tasers, body worn cameras (BWC), and redaction software from Axon Enterprise, Inc. for officers. If approved, this request will authorize the replacement of the current model Taser 7 with the Taser 10 and current model BWC 3 with BWC 4.

The Police Department has issued its officers a less-lethal, intermediate electronic control device (ECD or Taser) for the past 30 years as a force option to reduce both suspect and officer injury. Tasers incapacitate resistive suspects and provide an essential alternative between physical control and deadly force to restrain an individual actively resisting officers.

Taser energy weapons are the most studied use of force tool available to law enforcement with over 1,000 reports, abstracts, letters, studies and resource material on the tool. With more than 5 million field deployments in nearly 30 years, studies have concluded that 99.75% of Taser deployments result in no significant injury to the exposed individual.

Broomfield's current Taser platform is the Taser 7 purchased in 2019. This product is reaching its end of service life as the five-year contract ends in December 2024. As Broomfield worked with Axon to renew this contract and identify a replacement for the Taser 7, the Taser 10 was identified as the most cost effective and safest less-lethal, intermediate control device for staff. This version offers advancements in accuracy, effectiveness, and reliability meaning there is less likelihood for a need to escalate to lethal force, thus increasing officer safety.

Axon has provided Broomfield a cost effective contract that combines the current Body Worn Camera (BWC3 renewing to BWC4) Program with the Taser 7 / Taser 10 program. The Axon Officer Safety Plan 10 Plus covers both technologies for the next five years under one contract. This program includes a built-in technology refresh option for existing devices, a full warranty during the contract term, and Evidence.com software licenses with unlimited online data storage for both Taser and BWCs. The program includes Taser holsters, docking stations, and rechargeable batteries; and with the virtual reality training option, Broomfield is able to reduce the need for practice cartridges and training targets.

Axon's software is compatible and standardized with the current digital evidence management software system (Evidence.com) currently used for BWCs. This makes Axon the sole source provider of Tasers and Evidence.com software.

Colorado law enforcement agencies are required by Colorado law to provide body worn cameras for each police officer who interacts with the public, citing: *C.R.S 24-31-902. Incident recordings - release - tampering - fine (1) (a) (I) By July 1, 2023, All local law enforcement agencies in the state and the Colorado State Patrol shall provide body worn cameras for each police officer of the law enforcement agency who interacts with members of the public. Law enforcement agencies may seek funding pursuant to section 24-33.5-519.*

The existing Taser/BWC contract will terminate on January 1, 2025, when the new contract begins.

If approved, Broomfield will purchase replacement Tasers, BWCs, and redaction software from Axon Enterprise, Inc. as a sole source provider of this equipment at a cost of \$3,503,118 over the next five years (\$700,623.60 average per year).

Proposed Resolution 2024-133 would approve the agreement with Axon Enterprise, Inc. in the amount of \$3,503,118 for 2025-2029, for Tasers, BWCs, and software and would allow the City and County Manager, or a designee thereof, to approve purchase orders for expenditures subject to annual budget appropriation.

## 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
01-22300-53730 Proposed 2025 budget for Tasers & BWC replacement	\$466,000
Mid-Year Supplemental Request 2025	\$234,623.60
01-22300-53730 Proposed 2026 budget	\$700,623.60
01-22300-53730 Proposed 2027 budget	\$700,623.60
01-22300-53730 Proposed 2028 budget	\$700,623.60
01-22300-53730 Proposed 2029 budget	\$700,623.60
<b>Budget Total</b>	<b>\$3,503,118</b>
<b>Tasers &amp; BWC Replacement (2025-2029)</b>	<b>\$3,503,118</b>
<b>Total Use of Funds</b>	<b>\$3,503,118</b>
<b>Projected Balance</b>	<b>\$0</b>

## Prior Council or Other Entity Actions

Resolution No. [2013-197](#)-City Council approved the purchase of Taser replacements from Taser International.

May 16, 2017- City Council Study Session on the Implementation of BPD's BWC program

Resolution No. [2017-128](#)-City Council approved the implementation and purchase of BWCs

Resolution No. [2019-233](#)-City Council adopted the budget for fiscal year 2020 which includes funds for Tasers, BWCs, and software

Resolution No. [2019-285](#) City Council approved the implementation and purchase of Taser, BWCs

## Proposed Actions / Recommendations

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

**That Resolution 2024-133 be adopted.**

## Alternatives

Currently, there are no competitive alternatives to Taser products that can meet or exceed the contract and service received through Taser. Axon's software is compatible and standardized with the current digital evidence management software system (Evidence.com) currently used for BWCs, making Axon the sole source provider of Tasers and Evidence.com software.

# RESOLUTION NO. 2024-133

A Resolution Approving an Agreement with Axon Enterprises, Inc. for the Replacement of Tasers, Body Worn Cameras, and Redaction Software

## Section 1.

The agreement between the City and County of Broomfield and Axon Enterprise, Inc. in the amount of \$3,503,118 for replacing existing Tasers, Body Worn Cameras, and Redaction Software 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 to an agreement, in form approved by the City and County Attorney.

## Section 3.

The agreement will automatically renew for four (4) additional one-year periods, subject to annual budget appropriation and availability of funds.

## Section 4.

The City and County Manager or designee is authorized to approve purchase orders for expenditures, subject to annual budget appropriation and availability of funds.

## Section 5.

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

Approved on November 12, 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 ON-CALL SERVICES AGREEMENT BY AND BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND AXON ENTERPRISE, INC. FOR TASER DEVICES AND BODY WORN CAMERA EQUIPMENT AND RELATED SOFTWARE AND SUPPORT SERVICES

1. **PARTIES.** The parties to this Master On-Call Services Agreement for TASER devices and Body Worn Camera Equipment and Related Software and Support Services (this "Agreement"), dated for reference purposes only this \_\_ day of \_\_\_\_\_, 2024, are the City and County of Broomfield, a Colorado municipal corporation and county, (the "City") and Axon Enterprise, Inc., a Delaware corporation (the "Contractor"), collectively, the "Parties," or individually, a "Party."
2. **RECITALS.** The Recitals to this Agreement are incorporated by this reference as though fully set forth within the body of this Agreement.
  - 2.1. The City desires the services of a contractor to provide TASER devices and body worn cameras and related software and services to the City as identified at a later date. The City will be spending approximately \$3.5 million as detailed in Quote Q-567068-45568.852BM over the five year period for services.
  - 2.2. The Contractor currently has a cooperative agreement through OMNIA Partners in coordination with the University of Nebraska (Contract No. 3544-21-4615) for body worn cameras and related products and services whereby other local governments are able to benefit from the procurement terms and conditions without proceeding with a formal procurement themselves. The Contractor, through the cooperative agreement, was determined to be of most advantageous to the City considering price and other factors 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 on an as needed basis. The Contractor has an existing contract with the City which expires December 31, 2024, and this Contract will become effective upon expiration of the previous contract.
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. **Services.** 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 Scope of Work attached hereto as Exhibit A and incorporated by this reference (the "Work"). The Contractor warrants that it is fully qualified to perform the Work and shall perform the Work in accordance with the professional standards of the industry and in strict accordance with the provisions of this Agreement. No adjustment or modification of the Contract Documents shall be allowed for any



misunderstanding of the Work or of the terms and provisions contained in the Contract Documents. The Contractor shall perform the Work to the satisfaction of the City and in strict accordance with the provisions of the Contract Documents. The Contractor understands that it may not be the only contractor providing these types of services to the City.

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

- 3.2.1. This Agreement; and
- 3.2.2. The Scope of Work, including the Master Services and Purchasing Agreement as revised attached hereto as Exhibit A;
- 3.2.3. The Contractor's Quote (Q-567068-45568.852BM) attached hereto as Exhibit B; and
- 3.2.4. Any Purchase Orders issued pursuant to this Agreement, which shall include a description of the equipment ordered, the Purchase Order Price, the period of performance for the Purchase Order; and
- 3.2.5. Any change orders and contract amendments, as applicable; and
- 3.2.6. The Insurance Requirements attached hereto as Exhibit C,

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. 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 qualified contractors available 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 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 and the pricing set forth in Exhibit B. A written Purchase Order shall, at a minimum, contain a description of the equipment/Work, the Purchase Order price, the period of performance for the Work.

**3.4. Approval and Acceptance of Work.** The City Representative shall be the sole judge of the acceptability of the Work by the Contractor. If, at the sole discretion of the City, conferences with the Contractor are necessary or desirable to explain or correct the Work, the Contractor shall make no

additional charge for time or costs for attendance at such conference or for making the required explanations or corrections. The City will provide written notice of acceptance or rejection following inspection of the deliverables. Any goods which are not rejected as defective or non-functional within forty-five (45) days of delivery shall be deemed accepted.

- 3.5. Criminal Justice Information Security. When applicable, before commencing performance of the services, the Contractor shall be registered with the Colorado Bureau of Investigation's Criminal Justice Information Systems ("CJIS") Vendor Management Program. The Contractor shall remain registered with the CJIS Vendor Management Program for the duration of the performance of this Agreement and shall immediately cease work and notify the City within 24 hours of its failure to remain registered. Any Contractor personnel who has access to the CJIS must pass a CJIS background check and comply with all CJIS-mandated security training. CJIS certification will be at the sole cost and expense of the Contractor. The Contractor will immediately notify the City if it learns that any of its personnel with access to CJIS is no longer CJIS certified and will prohibit non-CJIS certified personnel from performing service under this Agreement. The Contractor shall be responsible for ensuring that any City-approved subcontractor with unsupervised access to City CJIS complies with the requirements of this paragraph. The Contractor agrees to ensure that any other access to City CJIS has appropriate supervision.

4. PERIOD OF PERFORMANCE: TERM: PROJECT SCHEDULE

- 4.1. Term. The initial term of this Agreement shall be one year, commencing on January 1, 2025, and extend and be effective through December 31, 2025, unless earlier terminated in accordance with the terms of this Agreement. Following the initial term, this Agreement shall automatically renew for up to four (4) additional one-year terms (each, a "Renewal Term") unless otherwise terminated in accordance with its terms. The Contractor will notify the City Representative identified below with a copy email to [Solicitations@broomfield.org](mailto:Solicitations@broomfield.org) of any changes in the Rate Sheet at least sixty (60) days prior to the commencement of such new rates and no more frequently than once every calendar year. The City shall have up to thirty (30) days to accept the new Rate Sheet in writing. If the City does not respond within such 30-day time period, the new Rate Sheet will be deemed accepted for any Purchase Orders issued after such date. If the City does not accept the revised Rate Sheet, the City may negotiate the Rate Sheet further or terminate this Agreement in its sole discretion. For purposes of clarity, the rates accepted and in effect at the time of execution of the original Purchase Order for a project shall be the applicable rates for such project until completion, even if a portion of such project is completed after a rate increase goes into effect at a later date. No Work shall be performed by the Contractor until the City has received acceptable certificates of insurance. A copy of the current Rate Sheet

must be on file with the Procurement Division prior to issuance of any Purchase Order.

- 4.2. Period of Performance. The Contractor shall begin the Work on or before the fifth calendar day after receipt of the notice to proceed (the "Start Date") and shall complete the Work on such project and fulfill all its obligations within the number of days set forth in each Purchase Order. All time limits are of the essence in this Agreement.
5. PRICE AND PAYMENT. The City shall pay the Contractor for performance of the Work the amount set forth in each Purchase Order issued for each specific project (the "Purchase Order Price") based upon the prices set forth on Contractor's Quote attached hereto as Exhibit B.
  - 5.1. Invoices. The Contractor will timely issue invoices for products and/ or services delivered or rendered pursuant to this Agreement. 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. Unless a different payment schedule is specified in Exhibit B of this Agreement, timely issuance of invoices is considered within thirty (30) days after the end of the month when services are rendered. 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. Invoices shall be paid within thirty (30) days of receipt by the City Representative. Failure to submit invoices for timely payment may result in nonpayment. Both Parties will use best efforts to resolve any dispute within 180 days. 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. The City will notify the Contractor of any dispute with respect to an invoice in writing. 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. The Omnia Cooperative Agreement Contract Number, 3544-21-4615, shall be included on each invoice.
  - 5.2. Change Orders. The Contractor will do nothing to cause the Purchase Order Price to increase without prior execution of a change order or amended Purchase Order by the City. The City will issue no change order or amended Purchase 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.

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

- 6.1. 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.
- 6.2. 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.

7. 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. Either Party may change its representative at any time by notice to the other Party. The Contractor Representative shall also be responsible for advising the City of the status of the Work and for assuring frequent and effective communication with the City. The Parties each designate an authorized representative as follows:

5.1 The City designates the party listed in each Purchase Order issued pursuant to this Agreement as the authorized representative of the City under this Agreement. In the absence of a party listed in a Purchase Order the authorized representative is Mark Goodell, whose email address is [mgoodell@broomfield.org](mailto:mgoodell@broomfield.org).

5.2 The Contractor designates the party listed in each Purchase Order issued pursuant to this Agreement as the authorized representative of the Contractor under this Agreement. In the absence of a party listed in a Purchase Order the authorized representative is Robert E. Driscoll, Jr., whose email address is [contracts@axon.com](mailto:contracts@axon.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).

8. **DEFAULT AND DAMAGES.** If the Contractor fails to comply with any provision of this Agreement or any Purchase Order, 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.
9. **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.**
10. **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 third party 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 negligent act, error or omission, or willful misconduct 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 Contractor.
11. **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 C. Current proof of such insurance is attached at Exhibit C, incorporated by this reference. However, proof of insurance attached as Exhibit C 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.
12. **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.

13. 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.
14. 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. For the express purpose of complying with the City's financial obligations hereunder, the City will appropriate funds equal to or in excess of the Purchase Order Price. The City will not issue a change order or other order resulting in compensable work by the Contractor that causes the aggregate amount payable under this Agreement to exceed the amount appropriated, unless an appropriation has been made to cover the costs of the additional work. The Contractor will be provided written verification of such appropriation upon a request sent to the City Representative. 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.
15. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
16. 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.
17. 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.

18. 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.
19. 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.
20. DOCUMENTS. All drawings, analyses, plans, tests, maps, surveys, electronic files and written material of any kind solely and exclusively created 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.
21. 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.
22. 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.
23. 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.
24. ASSIGNMENT. This Agreement shall not be assigned by either Party without the prior written consent of the other Party **and such consent shall not be unreasonably withheld.**
25. 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.
26. 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.

27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. TERMINATION. The City reserves the right to terminate this Contract, in whole or in part, as stated in the [Master Services and Purchasing Agreement](#).



33. 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.
  
34. DIGITAL ACCESSIBILITY STANDARDS. Contractor is committed to promoting accessibility and digital inclusion to its products and services. Contractor believes all of our clients should be able to easily use our products and services and access all of our content and digital offerings. Contractor works to conform with the Web Content Accessibility Guidelines (WCAG) 2.1 Level AA Success Criteria to the greatest extent possible. Contractor regularly tests its products using a variety of assistive technologies, browsers and devices to develop improvements, help maintain conformance and provide an accessible experience for all users. Contractor remediates accessibility issues when discovered. If City has any accessibility issues, then City must contact its designated Contractor representative and/or [compliance@Contractor.com](mailto:compliance@Contractor.com) and identify the particular accessibility issue(s) with as much specificity as possible. In some cases, Contractor may recommend trying different types of browsers with assistive technology applications to determine which combination works best for City's system, and Contractor will be available to discuss options. If an accommodation is found to be necessary due to a verified accessibility issue, then Contractor agrees to remediate the accessibility issue upon request or provide an alternative accommodation at Contractor's cost. If the accessibility issue cannot be immediately remediated, then Contractor will provide a reasonable timeline for any requested remediation or accommodation. The parties agree that a verified accessibility issue will not include issues due to intermediary interference (e.g. virus protection software, outdated web browsers or outdated assistive technology) or a user's inability to properly utilize compliant assistive technology. City agrees to cooperate and work with Contractor to discuss options for accessibility and accommodations. If the parties cannot agree that there is a verifiable accessibility issue, then Contractor reserves the right to consult with an independent and mutually agreeable accessibility expert to verify the accessibility issue, provide remediation options and/or provide an alternative accommodation. To the extent that Contractor utilizes other third-party applications or plug-ins, now or in the future, Contractor encourages third-parties to make their products and services accessible. These third-party applications and/or plug-ins are not controlled by Contractor and may present challenges for individuals with disabilities that Contractor may not be able to control or remedy.
  
35. 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

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

APPROVED AS TO FORM:

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

CONTRACTOR:

AXON ENTERPRISE, INC., a Delaware corporation

Signed by:  
*Robert E. Driscoll, Jr.*  
By: \_\_\_\_\_  
Name: Robert E. Driscoll, Jr.  
Address: 17800 N. 85th St.  
Scottsdale, AZ 85255

EXHIBIT A

SCOPE OF WORK

The Scope of this Agreement involves the furnishing of TASER devices and body worn camera equipment, licenses, unlimited cloud based storage, support services, and redaction software and support as described in the [Master Services and Purchasing Agreement](#) attached hereto as Exhibit A at the rates as indicated in the Contractor's Quote attached to this Agreement as Exhibit B. To the extent any of the terms and conditions in the Master Services and Purchasing Agreement conflict with the terms of this Agreement, the terms of this Agreement and the Cooperative Agreement terms shall apply.

**AXON****Master Services and Purchasing Agreement for Customer**

This Master Services and Purchasing Agreement ("**Agreement**") is between Axon Enterprise, Inc. ("**Axon**"), and the customer listed below or, if no customer is listed below, the customer on the Quote attached hereto ("**Customer**"). This Agreement is effective as of the later of the (a) last signature date on this Agreement or (b) date of acceptance of the Quote ("**Effective Date**"). Axon and Customer are each a "**Party**" and collectively "**Parties**". This Agreement governs Customer's purchase and use of the Axon Devices and Services detailed in the Quote as defined below. It is the intent of the Parties that this Agreement will govern all subsequent purchases by Customer for the same Axon Devices and Services in the Quote, and all such subsequent quotes accepted by Customer shall be also incorporated into this Agreement by reference as a Quote. The Parties agree as follows:

**1. Definitions.**

- 1.1. "**Axon Cloud Services**" means Axon's web services, including but not limited to, Axon Evidence, Axon Records, Axon Dispatch, FUSUS services and interactions between Axon Evidence and Axon Devices or Axon client software. Axon Cloud Service excludes third-party applications, hardware warranties, and my.evidence.com.
- 1.2. "**Axon Device**" means all hardware provided by Axon under this Agreement. Axon-manufactured Devices are a subset of Axon Devices.
- 1.3. "**Quote**" means an offer to sell and is only valid for devices and services on the offer at the specified prices. Any inconsistent or supplemental terms within Customer's purchase order in response to a Quote will be void. Orders are subject to prior credit approval. Changes in the deployment estimated ship date may change charges in the Quote. Shipping dates are estimates only. Axon is not responsible for typographical errors in any Quote by Axon, and Axon reserves the right to cancel any orders resulting from such errors.
- 1.4. "**Services**" means all services provided by Axon under this Agreement, including software, Axon Cloud Services, and professional services.

**2. Term.** This Agreement begins on the Effective Date and continues until all subscriptions hereunder have expired or have been terminated ("**Term**").

- 2.1. All subscriptions including Axon Evidence, Axon Fleet, Officer Safety Plans, Technology Assurance Plans, and TASER 7 or TASER 10 plans begin on the date stated in the Quote. Each subscription term ends upon completion of the subscription stated in the Quote ("**Subscription Term**").
- 2.2. Upon completion of the Subscription Term, the Subscription Term will automatically renew for an additional 5 years ("**Renewal Term**"). For purchase of TASER 7 or TASER 10 as a standalone, Axon may increase pricing to its then-current list pricing for any Renewal Term. For all other purchases, Axon may increase pricing on all line items in the Quote by up to 3% at the beginning of each year of the Renewal Term. New devices and services may require additional terms. Axon will not authorize services until Axon receives a signed Quote or accepts a purchase order, whichever is first.

**3. Payment.** Axon invoices for Axon Devices upon shipment, or on the date specified within the invoicing plan in the Quote. Payment is due net 30 days from the invoice date. Axon invoices for Axon Cloud Services on an upfront annual basis prior to the beginning of the Subscription Term and upon the anniversary of the Subscription Term. Payment obligations are non-cancelable. Unless otherwise prohibited by law, Customer will pay interest on all past-due sums at the lower of one-and-a-half percent (1.5%) per month or the highest rate allowed by law. Customer will pay invoices without setoff, deduction, or withholding. If Axon sends a past due account to collections, Customer is responsible for collection and attorneys' fees.**4. Taxes.** Customer is responsible for sales and other taxes associated with the order unless Customer provides Axon a valid tax exemption certificate.**5. Shipping.** Axon may make partial shipments and ship Axon Devices from multiple locations. All shipments are EXW (Incoterms 2020) via common carrier. Title and risk of loss pass to Customer upon Axon's delivery to the common carrier. Customer is responsible for any shipping charges in the Quote.**6. Returns.** All sales are final. Axon does not allow refunds or exchanges, except warranty returns or as provided by state or federal law.**7. Warranty.**

- 7.1. **Limited Warranty.** Axon warrants that Axon-manufactured Devices are free from defects in workmanship and materials for one (1) year from the date of Customer's receipt, except Signal Sidearm which Axon warrants for thirty (30) months from Customer's receipt and Axon-manufactured accessories, which Axon warrants for ninety (90) days from Customer's receipt, respectively, from the date of Customer's receipt. Used conducted energy weapon ("**CEW**") cartridges are deemed to have operated properly. Extended warranties run from the expiration of the one (1) year hardware warranty through the extended warranty term purchased.

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- 7.2. **Disclaimer.** All software and Axon Cloud Services are provided "AS IS," without any warranty of any kind, either express or implied, including without limitation the implied warranties of merchantability, fitness for a particular purpose and non-infringement. Axon Devices and Services that are not manufactured, published or performed by Axon ("Third-Party Products") are not covered by Axon's warranty and are only subject to the warranties of the third-party provider or manufacturer.
- 7.3. **Claims.** If Axon receives a valid warranty claim for an Axon-manufactured Device during the warranty term, Axon's sole responsibility is to repair or replace the Axon-manufactured Device with the same or like Axon-manufactured Device, at Axon's option. A replacement Axon-manufactured Device will be new or like new. Axon will warrant the replacement Axon-manufactured Device for the longer of (a) the remaining warranty of the original Axon-manufactured Device or (b) ninety (90) days from the date of repair or replacement.
- 7.3.1. If Customer exchanges an Axon Device or part, the replacement item becomes Customer's property, and the replaced item becomes Axon's property. Before delivering an Axon-manufactured Device for service, Customer must upload Axon-manufactured Device data to Axon Evidence or download it and retain a copy. Axon is not responsible for any loss of software, data, or other information contained in storage media or any part of the Axon-manufactured Device sent to Axon for service.
- 7.4. **Spare Axon Devices.** At Axon's reasonable discretion, Axon may provide Customer a predetermined number of spare Axon Devices as detailed in the Quote ("**Spare Axon Devices**"). Spare Axon Devices are intended to replace broken or non-functioning units while Customer submits the broken or non-functioning units, through Axon's warranty return process. Axon will repair or replace the unit with a replacement Axon Device. Title and risk of loss for all Spare Axon Devices shall pass to Customer in accordance with shipping terms of this Agreement. Axon assumes no liability or obligation in the event Customer does not utilize Spare Axon Devices for the intended purpose.
- 7.5. **Limitations.** Axon's warranty excludes damage related to: (a) failure to follow Axon Device use instructions; (b) Axon Devices used with equipment not manufactured or recommended by Axon; (c) abuse, misuse, or intentional damage to Axon Device; (d) force majeure; (e) Axon Devices repaired or modified by persons other than Axon without Axon's written permission; or (f) Axon Devices with a defaced or removed serial number. Axon's warranty will be void if Customer resells Axon Devices.
- 7.5.1. **To the extent permitted by law, the above warranties and remedies are exclusive. Axon disclaims all other warranties, remedies, and conditions, whether oral, written, statutory, or implied. If statutory or implied warranties cannot be lawfully disclaimed, then such warranties are limited to the duration of the warranty described above and by the provisions in this Agreement. Customer confirms and agrees that in deciding whether to sign this Agreement, Customer has not relied on any statement or representation by Axon or anyone acting on behalf of Axon related to the subject matter of this Agreement that is not in this Agreement.**
- 7.5.2. **Axon's cumulative liability to any party for any loss or damage resulting from any claim, demand, or action arising out of or relating to this Agreement will not exceed the purchase price paid to Axon for the Axon Device, or if for Services, the amount paid for such Services over the twelve (12) months preceding the claim. Neither Party will be liable for special, indirect, incidental, punitive or consequential damages, however caused, whether for breach of warranty or contract, negligence, strict liability, tort or any other legal theory.**
- 7.6. **Online Support Platforms.** Use of Axon's online support platforms (e.g., Axon Academy and MyAxon) is governed by the Axon Online Support Platforms Terms of Use Appendix available at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions).
- 7.7. **Third-Party Software and Services.** Use of software or services other than those provided by Axon is governed by the terms, if any, entered into between Customer and the respective third-party provider, including, without limitation, the terms applicable to such software or services located at [www.axon.com/sales-terms-and-conditions](http://www.axon.com/sales-terms-and-conditions), if any.
- 7.8. **Axon Aid.** Upon mutual agreement between Axon and Customer, Axon may provide certain products and services to Customer, as a charitable donation under the Axon Aid program. In such event, Customer expressly waives and releases any and all claims, now known or hereafter known, against Axon and its officers, directors, employees, agents, contractors, affiliates, successors, and assigns (collectively, "**Releasees**"), including but not limited to, on account of injury, death, property damage, or loss of data, arising out of or attributable to the Axon Aid program whether arising out of the negligence of any Releasees or otherwise. Customer agrees not to make or bring any such claim against any Releasee, and forever release and discharge all Releasees from liability under such claims. Customer expressly allows Axon to publicly announce its participation in Axon Aid and use its name in marketing materials. Axon may terminate the Axon Aid program without cause immediately

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upon notice to the Customer.

8. **Statement of Work.** Certain Axon Devices and Services, including Axon Interview Room, Axon Channel Services, and Axon Fleet, may require a Statement of Work that details Axon's Service deliverables ("**SOW**"). In the event Axon provides an SOW to Customer, Axon is only responsible for the performance of Services described in the SOW. Additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule. The SOW is incorporated into this Agreement by reference.
9. **Axon Device Warnings.** See [www.axon.com/legal](http://www.axon.com/legal) for the most current Axon Device warnings.
10. **Design Changes.** Axon may make design changes to any Axon Device or Service without notifying Customer or making the same change to Axon Devices and Services previously purchased by Customer.
11. **Bundled Offerings.** Some offerings in bundled offerings may not be generally available at the time of Customer's purchase. Axon will not provide a refund, credit, or additional discount beyond what is in the Quote due to a delay of availability or Customer's election not to utilize any portion of an Axon bundle.
12. **Insurance.** Axon will maintain General Liability, Workers' Compensation, and Automobile Liability insurance. Upon request, Axon will supply certificates of insurance.
13. **IP Rights.** Axon owns and reserves all right, title, and interest in Axon-manufactured Devices and Services and suggestions to Axon, including all related intellectual property rights. Customer will not cause any Axon proprietary rights to be violated.
14. **IP Indemnification.** Axon will indemnify Customer against all claims, losses, and reasonable expenses from any third-party claim alleging that the use of Axon-manufactured Devices, Axon Cloud Services or Axon software ("**Axon Products**") infringes or misappropriates the third-party's intellectual property rights. Customer must promptly provide Axon with written notice of such claim, tender to Axon the defense or settlement of such claim at Axon's expense and cooperate fully with Axon in the defense or settlement of such claim. Axon's IP indemnification obligations do not apply to claims based on (a) modification of Axon Products by Customer or a third-party not approved by Axon; (b) use of Axon Products in combination with hardware or services not approved by Axon; (c) use of Axon Products other than as permitted in this Agreement; or (d) use of Axon Products that is not the most current software release provided by Axon.
15. **Customer Responsibilities.** Customer is responsible for (a) Customer's use of Axon Devices; (b) Customer or an end user's breach of this Agreement or violation of applicable law; (c) disputes between Customer and a third-party over Customer's use of Axon Devices; (d) secure and sustainable destruction and disposal of Axon Devices at Customer's cost; and (e) any regulatory violations or fines, as a result of improper destruction or disposal of Axon Devices.
16. **Termination.**
  - 16.1. **For Breach.** A Party may terminate this Agreement for cause if it provides thirty (30) days written notice of the breach to the other Party, and the breach remains uncured thirty (30) days after written notice. If Customer terminates this Agreement due to Axon's uncured breach, Axon will refund prepaid amounts on a prorated basis based on the effective date of termination.
  - 16.2. **By Customer.** If sufficient funds are not appropriated or otherwise legally available to pay the fees, Customer may terminate this Agreement. Customer will deliver notice of termination under this section as soon as reasonably practicable.
  - 16.3. **Effect of Termination.** Upon termination of this Agreement, Customer rights immediately terminate. Customer remains responsible for all fees incurred before the effective date of termination. If Customer purchases Axon Devices for less than the manufacturer's suggested retail price ("**MSRP**") and this Agreement terminates before the end of the Term, Axon will invoice Customer the difference between the MSRP for Axon Devices received, including any Spare Axon Devices, and amounts paid towards those Axon Devices. Only if terminating for non-appropriation, Customer may return Axon Devices to Axon within thirty (30) days of termination. MSRP is the standalone price of the individual Axon Device at the time of sale. For bundled Axon Devices, MSRP is the standalone price of all individual components.
17. **Confidentiality.** "**Confidential Information**" means nonpublic information designated as confidential or, given the nature of the information or circumstances surrounding disclosure, should reasonably be understood to be confidential. Each Party will take reasonable measures to avoid disclosure, dissemination, or unauthorized use of the other Party's Confidential Information. Unless required by law, neither Party will disclose the other Party's Confidential Information during the Term and for five (5) years thereafter. To the extent permissible by law, Axon pricing is Confidential Information and competition sensitive. If Customer receives a public records request to disclose Axon

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Confidential Information, to the extent allowed by law, Customer will provide notice to Axon before disclosure. Axon may publicly announce information related to this Agreement.

18. **General.**

- 18.1. **Force Majeure.** Neither Party will be liable for any delay or failure to perform due to a cause beyond a Party's reasonable control.
- 18.2. **Independent Contractors.** The Parties are independent contractors. Neither Party has the authority to bind the other. This Agreement does not create a partnership, franchise, joint venture, Customer, fiduciary, or employment relationship between the Parties.
- 18.3. **Third-Party Beneficiaries.** There are no third-party beneficiaries under this Agreement.
- 18.4. **Non-Discrimination.** Neither Party nor its employees will discriminate against any person based on race; religion; creed; color; sex; gender identity and expression; pregnancy; childbirth; breastfeeding; medical conditions related to pregnancy, childbirth, or breastfeeding; sexual orientation; marital status; age; national origin; ancestry; genetic information; disability; veteran status; or any class protected by local, state, or federal law.
- 18.5. **Export Compliance.** Each Party will comply with all import and export control laws and regulations.
- 18.6. **Assignment.** Neither Party may assign this Agreement without the other Party's prior written consent. Axon may assign this Agreement, its rights, or obligations without consent: (a) to an affiliate or subsidiary; or (b) for purposes of financing, merger, acquisition, corporate reorganization, or sale of all or substantially all its assets. This Agreement is binding upon the Parties respective successors and assigns.
- 18.7. **Waiver.** No waiver or delay by either Party in exercising any right under this Agreement constitutes a waiver of that right.
- 18.8. **Severability.** If a court of competent jurisdiction holds any portion of this Agreement invalid or unenforceable, the remaining portions of this Agreement will remain in effect.
- 18.9. **Survival.** The following sections will survive termination: Payment, Warranty, Axon Device Warnings, Indemnification, IP Rights, Customer Responsibilities and any other Sections detailed in the survival sections of the Appendices.
- 18.10. **Governing Law.** The laws of the country, state, province, or municipality where Customer is physically located, without reference to conflict of law rules, govern this Agreement and any dispute arising from it. The United Nations Convention for the International Sale of Goods does not apply to this Agreement.
- 18.11. **Notices.** All notices must be in English. Notices posted on Customer's Axon Evidence site are effective upon posting. Notices by email are effective on the sent date of the email. Notices by personal delivery are effective immediately. Notices to Customer shall be provided to the address on file with Axon. Notices to Axon shall be provided to Axon Enterprise, Inc., Attn: Legal, 17800 North 85th Street, Scottsdale, Arizona 85255 with a copy to [legal@axon.com](mailto:legal@axon.com).
- 18.12. **Entire Agreement.** This Agreement, the Appendices, including any applicable Appendices not attached herein for the products and services purchased, which are incorporated by reference and located in the Master Purchasing and Services Agreement located at <https://www.axon.com/sales-terms-and-conditions>, Quote and any SOW(s), represents the entire agreement between the Parties. This Agreement supersedes all prior agreements or understandings, whether written or verbal, regarding the subject matter of this Agreement. This Agreement may only be modified or amended in a writing signed by the Parties.





AXON

Master Services and Purchasing Agreement for Customer

Each Party, by and through its respective representative authorized to execute this Agreement, has duly executed and delivered this Agreement as of the date of signature.

AXON:

CUSTOMER:

Axon Enterprise, Inc.

\_\_\_\_\_

Signature: <sup>Signed by:</sup> Robert E. Driscoll, Jr.

Signature: \_\_\_\_\_

Name: Robert E. Driscoll, Jr.

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

Title: Deputy General Counsel

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

Date: 10/22/2024 | 1:14 PM MST

Date: \_\_\_\_\_



## Master Services and Purchasing Agreement for Customer

### Axon Cloud Services Terms of Use Appendix

#### 1. **Definitions.**

- a. **"Customer Content"** is data uploaded into, ingested by, or created in Axon Cloud Services within Customer's tenant, including media or multimedia uploaded into Axon Cloud Services by Customer. Customer Content includes Evidence but excludes Non-Content Data.
  - b. **"Evidence"** is media or multimedia uploaded into Axon Evidence as 'evidence' by a Customer. Evidence is a subset of Customer Content.
  - c. **"Non-Content Data"** is data, configuration, and usage information about Customer's Axon Cloud Services tenant, Axon Devices and client software, and users that is transmitted or generated when using Axon Devices. Non-Content Data includes data about users captured during account management and customer support activities. Non-Content Data does not include Customer Content.
  - d. **"Provided Data"** means de-identified, de-personalized, data derived from Customer's TASER energy weapon deployment reports, related TASER energy weapon logs, body-worn camera footage, and incident reports.
  - e. **"Transformed Data"** means the Provided Data used for the purpose of quantitative evaluation of the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.
2. **Access.** Upon Axon granting Customer a subscription to Axon Cloud Services, Customer may access and use Axon Cloud Services to store and manage Customer Content. Customer may not exceed more end users than the Quote specifies. Axon Air requires an Axon Evidence subscription for each drone operator. For Axon Evidence Lite, Customer may access and use Axon Evidence only to store and manage TASER CEW and TASER CAM data ("**TASER Data**"). Customer may not upload non-TASER Data to Axon Evidence Lite.
  3. **Customer Owns Customer Content.** Customer controls and owns all right, title, and interest in Customer Content. Except as outlined herein, Axon obtains no interest in Customer Content, and Customer Content is not Axon's business records. Customer is solely responsible for uploading, sharing, managing, and deleting Customer Content. Axon will only have access to Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of the Axon products.
  4. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Content against accidental or unlawful loss, access or disclosure. Axon will maintain a comprehensive information security program to protect Axon Cloud Services and Customer Content including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; encryption of uploaded digital evidence; security education; and data protection. Axon agrees to the Federal Bureau of Investigation Criminal Justice Information Services Security Addendum for its digital evidence or records management systems.
  5. **Customer Responsibilities.** Customer is responsible for (a) ensuring Customer owns Customer Content or has the necessary rights to use Customer Content (b) ensuring no Customer Content or Customer end user's use of Customer Content or Axon Cloud Services violates this Agreement or applicable laws; (c) maintaining necessary computer equipment and Internet connections for use of Axon Cloud Services and (d) verify the accuracy of any auto generated or AI generated reports. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to Axon Cloud Services.
    - a. Customer will also maintain the security of end usernames and passwords and security and access by end users to Customer Content. Customer is responsible for ensuring the configuration and utilization of Axon Cloud Services meet applicable Customer regulation and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. If Customer provides access to unauthorized third-parties, Axon may assess additional fees along with suspending Customer's access. Customer shall contact Axon immediately if an unauthorized party may be using Customer's account or Customer Content, or if account information is lost or stolen.
  6. **Privacy.** Customer's use of Axon Cloud Services is subject to the Axon Cloud Services Privacy Policy, a current version of which is available at <https://www.axon.com/legal/cloud-services-privacy-policy>. Customer agrees to allow Axon access to Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic



## Master Services and Purchasing Agreement for Customer

screenings; (b) provide, develop, improve, and support current and future Axon products and related services; and (c) enforce this Agreement or policies governing the use of Axon products.

7. **Axon Body Wi-Fi Positioning.** Axon Body cameras may offer a feature to enhance location services where GPS/GNSS signals may not be available, for instance, within buildings or underground. Customer administrators can manage their choice to use this service within the administrative features of Axon Cloud Services. If Customer chooses to use this service, Axon must also enable the usage of the feature for Customer's Axon Cloud Services tenant. Customer will not see this option with Axon Cloud Services unless Axon has enabled Wi-Fi Positioning for Customer's Axon Cloud Services tenant.

8. **Storage.** For Axon Unlimited Device Storage subscriptions, Customer may store unlimited data in Customer's Axon Evidence account only if data originates from Axon Capture or an Axon Device. Axon may charge Customer additional fees for exceeding purchased storage amounts. Axon may place Customer Content that Customer has not viewed or accessed for six (6) months into archival storage. Customer Content in archival storage will not have immediate availability and may take up to twenty-four (24) hours to access.

For Third-Party Unlimited Storage the following restrictions apply: (i) it may only be used in conjunction with a valid Axon's Evidence.com user license; (ii) is limited to data of the law enforcement Customer that purchased the Third-Party Unlimited Storage and the Axon's Evidence.com end user or Customer is prohibited from storing data for other law enforcement agencies; and (iii) Customer may only upload and store data that is directly related to: (1) the investigation of, or the prosecution of a crime; (2) common law enforcement activities; or (3) any Customer Content created by Axon Devices or Evidence.com.

9. **Location of Storage.** Axon may transfer Customer Content to third-party subcontractors for storage. Axon will determine the locations of data centers for storage of Customer Content. For United States agencies, Axon will ensure all Agency Content stored in Axon Cloud Services remains within the United States. Ownership of Customer Content remains with Customer.
10. **Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of Axon Cloud Services immediately upon notice, if Customer or end user's use of or registration for Axon Cloud Services may (a) pose a security risk to Axon Cloud Services or any third-party; (b) adversely impact Axon Cloud Services, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees incurred through suspension. Axon will not delete Customer Content because of suspension, except as specified in this Agreement.
11. **Axon Cloud Services Warranty.** Axon disclaims any warranties or responsibility for data corruption or errors before Customer uploads data to Axon Cloud Services.
12. **TASER Data Science Program.** Axon will provide a quantitative evaluation on the performance and effectiveness of TASER energy weapons in the field across a variety of circumstances.

If Customer purchases the TASER Data Science Program, Customer grants Axon, its affiliates, and assignees an irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Provided Data solely for the purposes of this Agreement and to create Transformed Data. Customer shall own all rights and title to Provided Data. Axon shall own all rights and title to Transformed Data and any derivatives of Transformed Data.

Axon grants to Customer an irrevocable, perpetual, fully paid, royalty-free, license to use to TASER Data Science report provided to Customer for its own internal purposes. **The Data Science report is provided "as is" and without any warranty of any kind.**

In the event Customer seeks Axon's deletion of Provided Data, it may submit a request to [privacy@axon.com](mailto:privacy@axon.com). Where reasonably capable of doing so, Axon will implement the request but at a minimum will not continue to collect Provided Data from Customer.

13. **Axon Records.** Axon Records is the software-as-a-service product that is generally available at the time Customer purchases an OSP 7 or OSP 10 bundle. During Customer's Axon Records Subscription Term, if any, Customer will be entitled to receive Axon's Update and Upgrade releases on an if-and-when available basis.
  - a. The Axon Records Subscription Term will end upon the completion of the Axon Records Subscription as documented in the Quote, or if purchased as part of an OSP 7 or OSP 10 bundle, upon completion of the OSP 7 or OSP 10 Term ("**Axon Records Subscription**")



## Master Services and Purchasing Agreement for Customer

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- b. An "**Update**" is a generally available release of Axon Records that Axon makes available from time to time. An "**Upgrade**" includes (i) new versions of Axon Records that enhance features and functionality, as solely determined by Axon; and/or (ii) new versions of Axon Records that provide additional features or perform additional functions. Upgrades exclude new products that Axon introduces and markets as distinct products or applications.
  - c. New or additional Axon products and applications, as well as any Axon professional services needed to configure Axon Records, are not included. If Customer purchases Axon Records as part of a bundled offering, the Axon Record subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Records to Customer.
  - d. Users of Axon Records at the Customer may upload files to entities (incidents, reports, cases, etc) in Axon Records with no limit to the number of files and amount of storage. Notwithstanding the foregoing, Axon may limit usage should the Customer exceed an average rate of one-hundred (100) GB per user per year of uploaded files. Axon will not bill for overages.
14. **Axon Cloud Services Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- a. reverse engineer, disassemble, or decompile Axon Cloud Services or apply any process to derive any source code included in Axon Cloud Services, or allow others to do the same;
  - b. copy, modify, tamper with, repair, or create derivative works of any part of Axon Cloud Services;
  - c. access or use Axon Cloud Services with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - d. use Axon Cloud Serves as a service bureau, or as part of an Customer infrastructure as a service;
  - e. use trade secret information contained in Axon Cloud Services, except as expressly permitted in this Agreement;
  - f. access Axon Cloud Services to build a competitive device or service or copy any features, functions, or graphics of Axon Cloud Services;
  - g. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within Axon Cloud Services; or
  - h. use Axon Cloud Services to store or transmit infringing, libelous, or other unlawful or tortious material; material in violation of third-party privacy rights; or malicious code.
15. **Draft One** Axon may impose usage restrictions if a single user generates more than one hundred (100) reports per month for two or more consecutive months.
16. **After Termination.** Axon will not delete Customer Content for ninety (90) days following termination. Axon Cloud Services will not be functional during these ninety (90) days other than the ability to retrieve Customer Content. Customer will not incur additional fees if Customer downloads Customer Content from Axon Cloud Services during this time. Axon has no obligation to maintain or provide Customer Content after these ninety (90) days and will thereafter, unless legally prohibited, delete all Customer Content. Upon request, Axon will provide written proof that Axon successfully deleted and fully removed all Customer Content from Axon Cloud Services.
17. **Post-Termination Assistance.** Axon will provide Customer with the same post-termination data retrieval assistance that Axon generally makes available to all customers. Requests for Axon to provide additional assistance in downloading or transferring Customer Content, including requests for Axon's data egress service, will result in additional fees and Axon will not warrant or guarantee data integrity or readability in the external system.
18. **U.S. Government Rights.** If Customer is a U.S. Federal department or using Axon Cloud Services on behalf of a U.S. Federal department, Axon Cloud Services is provided as a "commercial item," "commercial computer software," "commercial computer software documentation," and "technical data", as defined in the Federal Acquisition Regulation and Defense Federal Acquisition Regulation Supplement. If Customer is using Axon Cloud Services on behalf of the U.S. Government and these terms fail to meet the U.S. Government's needs or are inconsistent in any respect with federal law, Customer will immediately discontinue use of Axon Cloud Services.



## Master Services and Purchasing Agreement for Customer

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19. **Survival.** Upon any termination of this Agreement, the following sections in this Appendix will survive: Customer Owns Customer Content, Privacy, Storage, Axon Cloud Services Warranty, Customer Responsibilities and Axon Cloud Services Restrictions.



## Master Services and Purchasing Agreement for Customer

### Axon Customer Experience Improvement Program Appendix

1. **Axon Customer Experience Improvement Program (ACEIP).** The ACEIP is designed to accelerate Axon's development of technology, such as building and supporting automated features, to ultimately increase safety within communities and drive efficiency in public safety. To this end, subject to the limitations on Axon as described below, Axon, where allowed by law, may make limited use of Customer Content from all of its customers to provide, develop, improve, and support current and future Axon products (collectively, "ACEIP Purposes"). However, at all times, Axon will comply with its obligations pursuant to the Axon Cloud Services Terms of Use Appendix to maintain a comprehensive data security program (including compliance with the CJIS Security Policy for Criminal Justice Information), privacy program, and data governance policy, including high industry standards of de-identifying Personal Data, to enforce its security and privacy obligations for the ACEIP. ACEIP has 2 tiers of participation, Tier 1 and Tier 2. By default, Customer will be a participant in ACEIP Tier 1. If Customer does not want to participate in ACEIP Tier 1, Customer can revoke its consent at any time. If Customer wants to participate in Tier 2, as detailed below, Customer can check the ACEIP Tier 2 box below. If Customer does not want to participate in ACEIP Tier 2, Customer should leave box unchecked. At any time, Customer may revoke its consent to ACEIP Tier 1, Tier 2, or both Tiers.
2. **ACEIP Tier 1.**
  - 2.1. When Axon uses Customer Content for the ACEIP Purposes, Axon will extract from Customer Content and may store separately copies of certain segments or elements of the Customer Content (collectively, "**ACEIP Content**"). When extracting ACEIP Content, Axon will use commercially reasonable efforts to aggregate, transform or de-identify Customer Content so that the extracted ACEIP Content is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual ("**Privacy Preserving Technique(s)**"). For illustrative purposes, some examples are described in footnote 1<sup>1</sup>. For clarity, ACEIP Content will still be linked indirectly, with an attribution, to the Customer from which it was extracted. This attribution will be stored separately from the data itself, but is necessary for and will be solely used to enable Axon to identify and delete all ACEIP Content upon Customer request. Once de-identified, ACEIP Content may then be further modified, analyzed, and used to create derivative works. At any time, Customer may revoke the consent granted herein to Axon to access and use Customer Content for ACEIP Purposes. Within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete any and all ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to Customer. In addition, if Axon uses Customer Content for the ACEIP Purposes, upon request, Axon will make available to Customer a list of the specific type of Customer Content being used to generate ACEIP Content, the purpose of such use, and the retention, privacy preserving extraction technique, and relevant data protection practices applicable to the Customer Content or ACEIP Content ("**Use Case**"). From time to time, Axon may develop and deploy new Use Cases. At least 30 days prior to authorizing the deployment of any new Use Case, Axon will provide Customer notice (by updating the list of Use Case at <https://www.axon.com/aceip> and providing Customer with a mechanism to obtain notice of that update or another commercially reasonable method to Customer designated contact) ("**New Use Case**").
  - 2.2. **Expiration of ACEIP Tier 1.** Customer consent granted herein will expire upon termination of the Agreement. In accordance with section 1.1.1, within 30 days of receiving the Customer's request, Axon will no longer access or use Customer Content for ACEIP Purposes and will delete ACEIP Content. Axon will also delete any derivative works which may reasonably be capable of being associated with, or could reasonably be linked directly or indirectly to, Customer.
3. **ACEIP Tier 2.** In addition to ACEIP Tier 1, if Customer wants to help further improve Axon's services, Customer may choose to participate in Tier 2 of the ACEIP. ACEIP Tier 2 grants Axon certain additional rights to use Customer

<sup>1</sup> For example; (a) when extracting specific text to improve automated transcription capabilities, text that could be used to directly identify a particular individual would not be extracted, and extracted text would be disassociated from identifying metadata of any speakers, and the extracted text would be split into individual words and aggregated with other data sources (including publicly available data) to remove any reasonable ability to link any specific text directly or indirectly back to a particular individual; (b) when extracting license plate data to improve Automated License Plate Recognition (ALPR) capabilities, individual license plate characters would be extracted and disassociated from each other so a complete plate could not be reconstituted, and all association to other elements of the source video, such as the vehicle, location, time, and the surrounding environment would also be removed; (c) when extracting audio of potential acoustic events (such as glass breaking or gun shots), very short segments (<1 second) of audio that only contains the likely acoustic events would be extracted and all human utterances would be removed.



## Master Services and Purchasing Agreement for Customer

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Content, in addition to those set forth in Tier 1 above, without the guaranteed deployment of a Privacy Preserving Technique to enable product development, improvement, and support that cannot be accomplished with aggregated, transformed, or de-identified data.

Check this box if Customer wants to help further improve Axon's services by participating in ACEIP Tier 2 in addition to Tier 1. Axon will not enroll Customer into ACEIP Tier 2 until Axon and Customer agree to terms in writing providing for such participation in ACEIP Tier 2.



**Master Services and Purchasing Agreement for Customer**

**Professional Services Appendix**

If any of the Professional Services specified below are included on the Quote, this Appendix applies.

- 1. Utilization of Services.** Customer must use professional services as outlined in the Quote and this Appendix within six (6) months of the Effective Date.
- 2. Axon Full Service (Axon Full Service).** Axon Full Service includes advance remote project planning and configuration support and up to four (4) consecutive days of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which on-site services are appropriate. If Customer requires more than four (4) consecutive on-site days, Customer must purchase additional days. Axon Full Service options include:

<p><b>System set up and configuration</b></p> <ul style="list-style-type: none"> <li>• Instructor-led setup of Axon View on smartphones (if applicable)</li> <li>• Configure categories and custom roles based on Customer need</li> <li>• Register cameras to Customer domain</li> <li>• Troubleshoot IT issues with Axon Evidence and Axon Dock ("Dock") access</li> <li>• One on-site session included</li> </ul>
<p><b>Dock configuration</b></p> <ul style="list-style-type: none"> <li>• Work with Customer to decide the ideal location of Docks and set configurations on Dock</li> <li>• Authenticate Dock with Axon Evidence using admin credentials from Customer</li> <li>• On-site assistance, not to include physical mounting of docks</li> </ul>
<p><b>Best practice implementation planning session</b></p> <ul style="list-style-type: none"> <li>• Provide considerations for the establishment of video policy and system operations best practices based on Axon's observations with other agencies</li> <li>• Discuss the importance of entering metadata in the field for organization purposes and other best practices for digital data management</li> <li>• Provide referrals of other agencies using the Axon camera devices and Axon Evidence</li> <li>• Recommend rollout plan based on review of shift schedules</li> </ul>
<p><b>System Admin and troubleshooting training sessions</b>                  Step-by-step explanation and assistance for Customer's configuration of security, roles &amp; permissions, categories &amp; retention, and other specific settings for Axon Evidence</p>
<p><b>Axon instructor training (Train the Trainer)</b>                  Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon has fulfilled its contractual on-site obligations</p>
<p><b>Evidence sharing training</b>                  Tailored workflow instruction for Investigative Units on sharing Cases and Evidence with local prosecuting agencies</p>
<p><b>End user go-live training and support sessions</b></p> <ul style="list-style-type: none"> <li>• Assistance with device set up and configuration</li> <li>• Training on device use, Axon Evidence, and Evidence Sync</li> </ul>
<p><b>Implementation document packet</b>                  Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories &amp; roles guide</p>
<p><b>Post go-live review</b></p>

- 3. Body-Worn Camera Starter Service (Axon Starter).** Axon Starter includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Starter options include:

<p><b>System set up and configuration (Remote Support)</b></p>
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**Master Services and Purchasing Agreement for Customer**

<ul style="list-style-type: none"> <li>• Instructor-led setup of Axon View on smartphones (if applicable)</li> <li>• Configure categories &amp; custom roles based on Customer need</li> <li>• Troubleshoot IT issues with Axon Evidence and Dock access</li> </ul>
<p><b>Dock configuration</b></p> <ul style="list-style-type: none"> <li>• Work with Customer to decide the ideal location of Dock setup and set configurations on Dock</li> <li>• Authenticate Dock with Axon Evidence using "Administrator" credentials from Customer</li> <li>• Does not include physical mounting of docks</li> </ul>
<p><b>Axon instructor training (Train the Trainer)</b>                  Training for Customer's in-house instructors who can support Customer's Axon camera and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>End user go-live training and support sessions</b></p> <ul style="list-style-type: none"> <li>• Assistance with device set up and configuration</li> <li>• Training on device use, Axon Evidence, and Evidence Sync</li> </ul>
<p><b><a href="#">Implementation document packet</a></b>                  Axon Evidence administrator guides, camera implementation guides, network setup guide, sample policies, and categories &amp; roles guide</p>

4. **Body-Worn Camera Virtual 1-Day Service (Axon Virtual).** Axon Virtual includes all items in the BWC Starter Service Package, except one (1) day of on-site services.
5. **CEW Services Packages.** CEW Services Packages are detailed below:

<p><b>System set up and configuration</b></p> <ul style="list-style-type: none"> <li>• Configure Axon Evidence categories &amp; custom roles based on Customer need.</li> <li>• Troubleshoot IT issues with Axon Evidence.</li> <li>• Register users and assign roles in Axon Evidence.</li> <li>• <b>For the CEW Full Service Package:</b> On-site assistance included</li> <li>• <b>For the CEW Starter Package:</b> Virtual assistance included</li> </ul>
<p><b>Dedicated Project Manager</b>                  Assignment of specific Axon representative for all aspects of planning the rollout (Project Manager). Ideally, Project Manager will be assigned to Customer 4–6 weeks before rollout</p>
<p><b>Best practice implementation planning session to include:</b></p> <ul style="list-style-type: none"> <li>• Provide considerations for the establishment of CEW policy and system operations best practices based on Axon's observations with other agencies</li> <li>• Discuss the importance of entering metadata and best practices for digital data management</li> <li>• Provide referrals to other agencies using TASER CEWs and Axon Evidence</li> <li>• <b>For the CEW Full Service Package:</b> On-site assistance included</li> <li>• <b>For the CEW Starter Package:</b> Virtual assistance included</li> </ul>
<p><b>System Admin and troubleshooting training sessions</b>                  On-site sessions providing a step-by-step explanation and assistance for Customer's configuration of security, roles &amp; permissions, categories &amp; retention, and other specific settings for Axon Evidence</p>
<p><b>Axon Evidence Instructor training</b></p> <ul style="list-style-type: none"> <li>• Provide training on the Axon Evidence to educate instructors who can support Customer's subsequent Axon Evidence training needs.</li> <li>• <b>For the CEW Full Service Package:</b> Training for up to 3 individuals at Customer</li> <li>• <b>For the CEW Starter Package:</b> Training for up to 1 individual at Customer</li> </ul>
<p><b>TASER CEW inspection and device assignment</b>                  Axon's on-site professional services team will perform functions check on all new TASER CEW Smart weapons and assign them to a user on Axon Evidence.</p>
<p><b>Post go-live review</b>  <b>For the CEW Full Service Package:</b> On-site assistance included.  <b>For the CEW Starter Package:</b> Virtual assistance included.</p>

6. **Smart Weapon Transition Service.** The Smart Weapon Transition Service includes:

<p><b>Archival of CEW Firing Logs</b>                  Axon's on-site professional services team will upload CEW firing logs to Axon Evidence from all TASER CEW</p>
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## Master Services and Purchasing Agreement for Customer

Smart Weapons that Customer is replacing with newer Smart Weapon models.

**Return of Old Weapons**

Axon's on-site professional service team will ship all old weapons back to Axon's headquarters.  
Axon will provide Customer with a Certificate of Destruction

\*Note: CEW Full Service packages for TASER 7 or TASER 10 include Smart Weapon Transition Service instead of 1-Day Device Specific Instructor Course.

7. **VR Services Package.** VR Service includes advance remote project planning and configuration support and one (1) day of on-site service and a professional services manager to work with Customer to assess Customer's deployment and determine which Services are appropriate. The VR Service training options include:

<p><b>System set up and configuration (Remote Support)</b></p> <ul style="list-style-type: none"> <li>Instructor-led setup of Axon VR headset content</li> <li>Configure Customer settings based on Customer need</li> <li>Troubleshoot IT issues with Axon VR headset</li> </ul>
<p><b>Axon instructor training (Train the Trainer)</b> Training for up to five (5) Customer's in-house instructors who can support Customer's Axon VR CET and SIM training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>Classroom and practical training sessions</b> Step-by-step explanation and assistance for Customer's configuration of Axon VR CET and SIM functionality, basic operation, and best practices</p>

8. **Axon Air, On-Site Training.** Axon Air, On-Site training includes advance remote project planning and configuration support and one (1) day of on-site Services and a professional services manager to work closely with Customer to assess Customer's deployment and determine which Services are appropriate. If Customer's requires more than one (1) day of on-site Services, Customer must purchase additional on-site Services. The Axon Air, On-Site training options include:

<p><b>System set up and configuration (Remote Support)</b></p> <ul style="list-style-type: none"> <li>Instructor-led setup of Axon Air App (ASDS)</li> <li>Configure Customer settings based on Customer need</li> <li>Configure drone controller</li> <li>Troubleshoot IT issues with Axon Evidence</li> </ul>
<p><b>Axon instructor training (Train the Trainer)</b> Training for Customer's in-house instructors who can support Customer's Axon Air and Axon Evidence training needs after Axon's has fulfilled its contracted on-site obligations</p>
<p><b>Classroom and practical training sessions</b> Step-by-step explanation and assistance for Customer's configuration of Axon Respond+ livestreaming functionality, basic operation, and best practices</p>

9. **Axon Air, Virtual Training.** Axon Air, Virtual training includes all items in the Axon Air, On-Site Training Package, except the practical training session, with the Axon Instructor training for up to four hours virtually.

10. **Signal Sidearm Installation Service.**

- a. **Purchases of 50 SSA units or more:** Axon will provide one (1) day of on-site service and one professional services manager and will provide train the trainer instruction, with direct assistance on the first of each unique holster/mounting type. Customer is responsible for providing a suitable work/training area.
- b. **Purchases of less than 50 SSA units:** Axon will provide a 1-hour virtual instruction session on the basics of installation and device calibration.

11. **Out of Scope Services.** Axon is only responsible to perform the professional services described in the Quote and this Appendix. Any additional professional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.

12. **Delivery of Services.** Axon personnel will work Monday through Friday, 8:30 a.m. to 5:30 p.m., except holidays. Axon will perform all on-site tasks over a consecutive timeframe. Axon will not charge Customer travel time by Axon



## Master Services and Purchasing Agreement for Customer

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personnel to Customer premises as work hours.

13. **Access Computer Systems to Perform Services.** Customer authorizes Axon to access relevant Customer computers and networks, solely for performing the Services. Axon will work to identify as soon as reasonably practicable resources and information Axon expects to use and will provide an initial itemized list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.
14. **Site Preparation.** Axon will provide a hardcopy or digital copy of current user documentation for the Axon Devices ("**User Documentation**"). User Documentation will include all required environmental specifications for the professional services and Axon Devices to operate per the Axon Device User Documentation. Before installation of Axon Devices (whether performed by Customer or Axon), Customer must prepare the location(s) where Axon Devices are to be installed ("**Installation Site**") per the environmental specifications in the Axon Device User Documentation. Following installation, Customer must maintain the Installation Site per the environmental specifications. If Axon modifies Axon Device User Documentation for any Axon Devices under this Agreement, Axon will provide the update to Customer when Axon generally releases it
15. **Acceptance.** When Axon completes professional services, Axon will present an acceptance form ("**Acceptance Form**") to Customer. Customer will sign the Acceptance Form acknowledging completion. If Customer reasonably believes Axon did not complete the professional services in substantial conformance with this Agreement, Customer must notify Axon in writing of the specific reasons for rejection within seven (7) calendar days from delivery of the Acceptance Form. Axon will address the issues and re-present the Acceptance Form for signature. If Axon does not receive the signed Acceptance Form or written notification of reasons for rejection within seven (7) calendar days of delivery of the Acceptance Form, Axon will deem Customer to have accepted the professional services.
16. **Customer Network.** For work performed by Axon transiting or making use of Customer's network, Customer is solely responsible for maintenance and functionality of the network. In no event will Axon be liable for loss, damage, or corruption of Customer's network from any cause.



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### Technology Assurance Plan Appendix

If Technology Assurance Plan ("TAP") or a bundle including TAP is on the Quote, this appendix applies.

1. **TAP Warranty.** The TAP warranty is an extended warranty that starts at the end of the one- (1-) year hardware limited warranty.
2. **Officer Safety Plan.** If Customer purchases an Officer Safety Plan ("OSP"), Customer will receive the deliverables detailed in the Quote. Customer must accept delivery of the TASER CEW and accessories as soon as available from Axon.
3. **OSP 7 or OSP 10 Term.** OSP 7 or OSP 10 begins on the date specified in the Quote ("OSP Term").
4. **TAP BWC Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon body-worn camera ("BWC Upgrade") as scheduled in the Quote. If Customer purchased TAP, Axon will provide a BWC Upgrade that is the same or like Axon Device, at Axon's option. Axon makes no guarantee the BWC Upgrade will utilize the same accessories or Axon dock.
5. **TAP Dock Upgrade.** If Customer has no outstanding payment obligations and purchased TAP, Axon will provide Customer a new Axon Dock as scheduled in the Quote ("Dock Upgrade"). Accessories associated with any Dock Upgrades are subject to change at Axon discretion. Dock Upgrades will only include a new Axon dock bay configuration unless a new Axon dock core is required for BWC compatibility. If Customer originally purchased a single-bay Axon dock, the Dock Upgrade will be a single-bay Axon dock model that is the same or like Axon Device, at Axon's option. If Customer originally purchased a multi-bay Axon dock, the Dock Upgrade will be a multi-bay Axon dock that is the same or like Axon Device, at Axon's option.
6. **Upgrade Delay.** Axon may ship the BWC and Dock Upgrades as scheduled in the Quote without prior confirmation from Customer unless the Parties agree in writing otherwise at least ninety (90) days in advance. Axon may ship the final BWC and Dock Upgrade as scheduled in the Quote sixty (60) days before the end of the Subscription Term without prior confirmation from Customer.
7. **Upgrade Change.** If Customer wants to upgrade Axon Device models from the current Axon Device to an upgraded Axon Device, Customer must pay the price difference between the MSRP for the current Axon Device and the MSRP for the upgraded Axon Device. If the model Customer desires has an MSRP less than the MSRP of the offered BWC Upgrade or Dock Upgrade, Axon will not provide a refund. The MSRP is the MSRP in effect at the time of the upgrade.
8. **Return of Original Axon Device.** Within thirty (30) days of receiving a BWC or Dock Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon including serial numbers for the destroyed Axon Devices. If Customer does not return or destroy the Axon Devices, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
9. **Termination.** If Customer's payment for TAP, OSP, or Axon Evidence is more than thirty (30) days past due, Axon may terminate TAP or OSP. Once TAP or OSP terminates for any reason:
  - 9.1. TAP and OSP coverage terminate as of the date of termination and no refunds will be given.
  - 9.2. Axon will not and has no obligation to provide the Upgrade Models.
  - 9.3. Customer must make any missed payments due to the termination before Customer may purchase any future TAP or OSP.



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**TASER Device Appendix**

This TASER Device Appendix applies to Customer's TASER 7/10, OSP 7/10, OSP Plus, or OSP 7/10 Plus Premium purchase from Axon, if applicable.

1. **Duty Cartridge Replenishment Plan.** If the Quote includes "Duty Cartridge Replenishment Plan", Customer must purchase the plan for each CEW user. A CEW user includes officers that use a CEW in the line of duty and those that only use a CEW for training. Customer may not resell cartridges received. Axon will only replace cartridges used in the line of duty.
2. **Training.** If the Quote includes a TASER On Demand Certification subscription, Customer will have on-demand access to TASER Instructor and TASER Master Instructor courses only for the duration of the TASER Subscription Term. Axon will issue a maximum of ten (10) TASER Instructor vouchers and ten (10) TASER Master Instructor vouchers for every thousand TASER Subscriptions purchased. Customer shall utilize vouchers to register for TASER courses at their discretion however Customer may incur a fee for cancellations less than 10 business days prior to a course date or failure to appear to a registered course. The voucher has no cash value. Customer cannot exchange voucher for any other device or service. Any unused vouchers at the end of the Term will be forfeited. A voucher does not include any travel or other expenses that might be incurred related to attending a course.
3. **Extended Warranty.** If the Quote includes an extended warranty, the extended warranty coverage period warranty will be for a five- (5-) year term, which includes the hardware manufacturer's warranty plus the four- (4-) year extended term.
4. **Trade-in.** If the Quote contains a discount on CEW-related line items and that discount is contingent upon the trade-in of hardware, Customer must return used hardware and accessories associated with the discount ("Trade-In Units") to Axon within the below prescribed timeline. Customer must ship batteries via ground shipping. Axon will pay shipping costs of the return. If Axon does not receive Trade-In Units within the timeframe below, Axon will invoice Customer the value of the trade-in credit. Customer may not destroy Trade-In Units and receive a trade-in credit.

<u>Customer Size</u>	<u>Days to Return from Start Date of TASER 10 Subscription</u>
Less than 100 officers	60 days
100 to 499 officers	90 days
500+ officers	180 days

5. **TASER Device Subscription Term.** The TASER Device Subscription Term for a standalone TASER Device purchase begins on shipment of the TASER Device. The TASER Device Subscription Term for OSP 7/10 begins on the OSP 7/10 start date.
6. **Access Rights.** Upon Axon granting Customer a TASER Device Axon Evidence subscription, Customer may access and use Axon Evidence for the storage and management of data from TASER Devices during the TASER Device Subscription Term. Customer may not exceed the number of end users the Quote specifies.
7. **Customer Warranty.** If Customer is located in the US, Customer warrants and acknowledges that TASER 10 is classified as a firearm and is being acquired for official Customer use pursuant to a law enforcement Customer transfer under the Gun Control Act of 1968.
8. **Purchase Order.** To comply with applicable laws and regulations, Customer must provide a purchase order to Axon prior to shipment of TASER 10.
9. **Apollo Grant (US only).** If Customer has received an Apollo Grant from Axon, Customer must pay all fees in the Quote prior to upgrading to any new TASER Device offered by Axon.
10. **Termination.** If payment for TASER Device is more than thirty (30) days past due, Axon may terminate Customer's TASER Device plan by notifying Customer. Upon termination for any reason, then as of the date of termination:
  - 10.1. TASER Device extended warranties and access to Training Content will terminate. No refunds will be given.
  - 10.2. Axon will invoice Customer the remaining MSRP for TASER Devices received before termination. If terminating for non-appropriations, Axon will not invoice Customer if Customer returns the TASER Device, rechargeable battery, holster, dock, core, training suits, and unused cartridges to Axon within thirty (30) days of the date of



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termination.

10.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future TASER Device plan.



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### Axon Auto-Tagging Appendix

If Auto-Tagging is included on the Quote, this Appendix applies.

1. **Scope.** Axon Auto-Tagging consists of the development of a module to allow Axon Evidence to interact with Customer's Computer-Aided Dispatch ("**CAD**") or Records Management Systems ("**RMS**"). This allows end users to auto-populate Axon video meta-data with a case ID, category, and location-based on data maintained in Customer's CAD or RMS.
2. **Support.** For thirty (30) days after completing Auto-Tagging Services, Axon will provide up to five (5) hours of remote support at no additional charge. Axon will provide free support due to a change in Axon Evidence, if Customer maintains an Axon Evidence and Auto-Tagging subscription. Axon will not provide support if a change is required because Customer changes its CAD or RMS.
3. **Changes.** Axon is only responsible to perform the Services in this Appendix. Any additional Services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in fees or schedule.
4. **Customer Responsibilities.** Axon's performance of Auto-Tagging Services requires Customer to:
  - 4.1. Make available relevant systems, including Customer's current CAD or RMS, for assessment by Axon (including remote access if possible);
  - 4.2. Make required modifications, upgrades or alterations to Customer's hardware, facilities, systems and networks related to Axon's performance of Auto-Tagging Services;
  - 4.3. Provide access to the premises where Axon is performing Auto-Tagging Services, subject to Customer safety and security restrictions, and allow Axon to enter and exit the premises with laptops and materials needed to perform Auto-Tagging Services;
  - 4.4. Provide all infrastructure and software information (TCP/IP addresses, node names, network configuration) necessary for Axon to provide Auto-Tagging Services;
  - 4.5. Promptly install and implement any software updates provided by Axon;
  - 4.6. Ensure that all appropriate data backups are performed;
  - 4.7. Provide assistance, participation, and approvals in testing Auto-Tagging Services;
  - 4.8. Provide Axon with remote access to Customer's Axon Evidence account when required;
  - 4.9. Notify Axon of any network or machine maintenance that may impact the performance of the module at Customer; and
  - 4.10. Ensure reasonable availability of knowledgeable staff and personnel to provide timely, accurate, complete, and up-to-date documentation and information to Axon.
5. **Access to Systems.** Customer authorizes Axon to access Customer's relevant computers, network systems, and CAD or RMS solely for performing Auto-Tagging Services. Axon will work diligently to identify the resources and information Axon expects to use and will provide an initial list to Customer. Customer is responsible for and assumes the risk of any problems, delays, losses, claims, or expenses resulting from the content, accuracy, completeness, and consistency of all data, materials, and information supplied by Customer.



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**Axon Fleet Appendix**

If Axon Fleet is included on the Quote, this Appendix applies.

1. Customer Responsibilities.
  - 1.1. Customer must ensure its infrastructure and vehicles adhere to the minimum requirements to operate Axon Fleet 2 Axon Fleet 3 or a future Fleet iteration (collectively, "**Axon Fleet**") as established by Axon during the qualifier call and on-site assessment at Customer and in any technical qualifying questions. If Customer's representations are inaccurate, the Quote is subject to change.
  - 1.2. Customer is responsible for providing a suitable work area for Axon or Axon third-party providers to install Axon Fleet systems into Customer vehicles. Customer is responsible for making available all vehicles for which installation services were purchased, during the agreed upon onsite installation dates, Failure to make vehicles available may require an equitable adjustment in fees or schedule.
2. **Cradlepoint**. If Customer purchases Cradlepoint Enterprise Cloud Manager, Customer will comply with Cradlepoint's end user license agreement. The term of the Cradlepoint license may differ from the Axon Evidence Subscription. If Customer requires Cradlepoint support, Customer will contact Cradlepoint directly.
3. **Third-party Installer**. Axon will not be liable for the failure of Axon Fleet hardware to operate per specifications if such failure results from installation not performed by, or as directed by Axon.
4. Wireless Offload Server.
  - 4.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use Wireless Offload Server ("**WOS**"). "Use" means storing, loading, installing, or executing WOS solely for data communication with Axon Devices for the number of licenses purchased. The WOS term begins upon the start of the Axon Evidence Subscription.
  - 4.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of WOS; (b) reverse engineer, disassemble, or decompile WOS, apply any process to derive the source code of WOS, or allow others to do so; (c) access or use WOS to avoid incurring fees or exceeding usage limits; (d) copy WOS in whole or part; (e) use trade secret information contained in WOS; (f) resell, rent, loan or sublicense WOS; (g) access WOS to build a competitive device or service or copy any features, functions or graphics of WOS; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within WOS.
  - 4.3. **Updates**. If Customer purchases WOS maintenance, Axon will make updates and error corrections to WOS ("**WOS Updates**") available electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate Internet access to receive WOS Updates and maintaining computer equipment necessary for use of WOS. The Quote will detail the maintenance term.
  - 4.4. **WOS Support**. Upon request by Axon, Customer will provide Axon with access to Customer's store and forward servers solely for troubleshooting and maintenance.
5. Axon Vehicle Software.
  - 5.1. **License Grant**. Axon grants Customer a non-exclusive, royalty-free, worldwide, perpetual license to use ViewXL or Dashboard (collectively, "**Axon Vehicle Software**".) "Use" means storing, loading, installing, or executing Axon Vehicle Software solely for data communication with Axon Devices. The Axon Vehicle Software term begins upon the start of the Axon Evidence Subscription.
  - 5.2. **Restrictions**. Customer may not: (a) modify, alter, tamper with, repair, or create derivative works of Axon Vehicle Software; (b) reverse engineer, disassemble, or decompile Axon Vehicle Software, apply any process to derive the source code of Axon Vehicle Software, or allow others to do so; (c) access or use Axon Vehicle Software to avoid incurring fees or exceeding usage limits; (d) copy Axon Vehicle Software in whole or part; (e) use trade secret information contained in Axon Vehicle Software; (f) resell, rent, loan or sublicense Axon Vehicle Software; (g) access Axon Vehicle Software to build a competitive device or service or copy any features, functions or graphics of Axon Vehicle Software; or (h) remove, alter or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Vehicle Software.





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6. **Acceptance Checklist.** If Axon provides services to Customer pursuant to any statement of work in connection with Axon Fleet, within seven (7) days of the date on which Customer retrieves Customer's vehicle(s) from the Axon installer, said vehicle having been installed and configured with tested and fully and properly operational in-car hardware and software identified above, Customer will receive a Professional Services Acceptance Checklist to submit to Axon indicating acceptance or denial of said deliverables.
7. **Axon Fleet Upgrade.** If Customer has no outstanding payment obligations and has purchased the "Fleet Technology Assurance Plan" (Fleet TAP), Axon will provide Customer with the same or like model of Fleet hardware ("**Axon Fleet Upgrade**") as scheduled on the Quote.
  - 7.1. If Customer would like to change models for the Axon Fleet Upgrade, Customer must pay the difference between the MSRP for the offered Axon Fleet Upgrade and the MSRP for the model desired. The MSRP is the MSRP in effect at the time of the upgrade. Customer is responsible for the removal of previously installed hardware and installation of the Axon Fleet Upgrade.
  - 7.2. Within thirty (30) days of receiving the Axon Fleet Upgrade, Customer must return the original Axon Devices to Axon or destroy the Axon Devices and provide a certificate of destruction to Axon, including serial numbers of the destroyed Axon Devices. If Customer does not destroy or return the Axon Devices to Axon, Axon will deactivate the serial numbers for the Axon Devices received by Customer.
8. **Axon Fleet Termination.** Axon may terminate Customer's Fleet subscription for non-payment. Upon any termination:
  - 8.1. Axon Fleet subscription coverage terminates, and no refunds will be given.
  - 8.2. Axon will not and has no obligation to provide the Axon Fleet Upgrade.
  - 8.3. Customer will be responsible for payment of any missed payments due to the termination before being allowed to purchase any future Fleet TAP.



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### Axon Respond Appendix

This Axon Respond Appendix applies to both Axon Respond and Axon Respond Plus, if either is included on the Quote.

1. **Axon Respond Subscription Term.** If Customer purchases Axon Respond as part of a bundled offering, the Axon Respond subscription begins on the later of the (1) start date of that bundled offering, or (2) date Axon provisions Axon Respond to Customer. If Customer purchases Axon Respond as a standalone, the Axon Respond subscription begins the later of the (1) date Axon provisions Axon Respond to Customer, or (2) first day of the month following the Effective Date. The Axon Respond subscription term will end upon the completion of the Axon Evidence Subscription associated with Axon Respond.
2. **Scope of Axon Respond.** The scope of Axon Respond is to assist Customer with real-time situational awareness during critical incidents to improve officer safety, effectiveness, and awareness. In the event Customer uses Axon Respond outside this scope, Axon may initiate good-faith discussions with Customer on upgrading Customer's Axon Respond to better meet Customer's needs.
3. **Axon Body LTE Requirements.** Axon Respond is only available and usable with an LTE enabled body-worn camera. Axon is not liable if Customer utilizes the LTE device outside of the coverage area or if the LTE carrier is unavailable. LTE coverage is only available in the United States, including any U.S. territories. Axon may utilize a carrier of Axon's choice to provide LTE service. Axon may change LTE carriers during the Term without Customer's consent.
4. **Axon Fleet LTE Requirements.** Axon Respond is only available and usable with a Fleet system configured with LTE modem and service. Customer is responsible for providing LTE service for the modem. Coverage and availability of LTE service is subject to Customer's LTE carrier.
5. **Axon Respond Service Limitations.** Customer acknowledges that LTE service is made available only within the operating range of the networks. Service may be temporarily refused, interrupted, or limited because of: (a) facilities limitations; (b) transmission limitations caused by atmospheric, terrain, other natural or artificial conditions adversely affecting transmission, weak batteries, system overcapacity, movement outside a service area or gaps in coverage in a service area, and other causes reasonably outside of the carrier's control such as intentional or negligent acts of third parties that damage or impair the network or disrupt service; or (c) equipment modifications, upgrades, relocations, repairs, and other similar activities necessary for the proper or improved operation of service.
  - 5.1. **With regard to Axon Body, Partner networks are made available as-is and the carrier makes no warranties or representations as to the availability or quality of roaming service provided by carrier partners, and the carrier will not be liable in any capacity for any errors, outages, or failures of carrier partner networks. Customer expressly understands and agrees that it has no contractual relationship whatsoever with the underlying wireless service provider or its affiliates or contractors and Customer is not a third-party beneficiary of any agreement between Axon and the underlying carrier.**
6. **Termination.** Upon termination of this Agreement, or if Customer stops paying for Axon Respond or bundles that include Axon Respond, Axon will end Axon Respond services, including any Axon-provided LTE service.



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### Add-on Services Appendix

This Appendix applies if Axon Community Request, Axon Redaction Assistant, and/or Axon Performance are included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as part of OSP 7 or OSP 10, the subscription begins on the later of the (1) start date of the OSP 7 or OSP 10 Term, or (2) date Axon provisions Axon Community Request Axon Redaction Assistant, or Axon Performance to Customer.
  - 1.1. If Customer purchases Axon Community Request, Axon Redaction Assistant, or Axon Performance as a standalone, the subscription begins the later of the (1) date Axon provisions Axon Community Request, Axon Redaction Assistant, or Axon Performance to Customer, or (2) first day of the month following the Effective Date.
  - 1.2. The subscription term will end upon the completion of the Axon Evidence Subscription associated with the add-on.
2. **Axon Community Request Storage.** For Axon Community Request, Customer may store an unlimited amount of data submitted through the public portal ("**Portal Content**"), within Customer's Axon Evidence instance. The post-termination provisions outlined in the Axon Cloud Services Terms of Use Appendix also apply to Portal Content.
3. **Performance Auto-Tagging Data.** In order to provide some features of Axon Performance to Customer, Axon will need to store call for service data from Customer's CAD or RMS.



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### Axon Auto-Transcribe Appendix

This Appendix applies if Axon Auto-Transcribe is included on the Quote.

1. **Subscription Term.** If Customer purchases Axon Auto-Transcribe as part of a bundle or Axon Cloud Services subscription, the subscription begins on the later of the (1) start date of the bundle or Axon Cloud Services license term, or (2) date Axon provisions Axon Auto-Transcribe to Customer. If Customer purchases Axon Auto-Transcribe minutes as a standalone, the subscription begins on the date Axon provisions Axon Auto-Transcribe to Customer.
  - 1.1. If Customer cancels Auto-Transcribe services, any amounts owed by the Parties will be based on the amount of time passed under the annual subscription, rather than on the number of minutes used, regardless of usage.
2. **Auto-Transcribe A-La-Carte Minutes.** Upon Axon granting Customer a set number of minutes, Customer may utilize Axon Auto-Transcribe, subject to the number of minutes allowed on the Quote. Customer will not have the ability to roll over unused minutes to future Auto-Transcribe terms. Axon may charge Customer additional fees for exceeding the number of purchased minutes. Axon Auto-Transcribe minutes expire one year after being provisioned to Customer by Axon.
3. **Axon Unlimited Transcribe.** Upon Axon granting Customer an Unlimited Transcribe subscription to Axon Auto-Transcribe, Customer may utilize Axon Auto-Transcribe with no limit on the number of minutes. Unlimited Transcribe includes automatic transcription of all Axon BWC and Axon Capture footage. With regard to Axon Interview Room, Axon Fleet, Axon Citizen, or third-party transcription, transcription must be requested on demand. Notwithstanding the foregoing, Axon may limit usage after 5,000 minutes per user per month for multiple months in a row. Axon will not bill for overages.
4. **Warranty.** Axon disclaims all warranties, express or implied, for Axon Auto-Transcribe.



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### Axon Virtual Reality Content Terms of Use Appendix

If Virtual Reality is included on the Quote, this Appendix applies.

1. **Term.** The Quote will detail the products and license duration, as applicable, of the goods, services, and software, and contents thereof, provided by Axon to Customer related to virtual reality (collectively, "Virtual Reality Media").
2. **Headsets.** Customer may purchase additional virtual reality headsets from Axon. In the event Customer decides to purchase additional virtual reality headsets for use with Virtual Reality Media, Customer must purchase those headsets from Axon.
3. **License Restrictions.** All licenses will immediately terminate if Customer does not comply with any term of this Agreement. If Customer utilizes more users than stated in this Agreement, Customer must purchase additional Virtual Reality Media licenses from Axon. Customer may not use Virtual Reality Media for any purpose other than as expressly permitted by this Agreement. Customer may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Virtual Reality Media;
  - 3.2. reverse engineer, disassemble, or decompile Virtual Reality Media or apply any process to derive the source code of Virtual Reality Media, or allow others to do the same;
  - 3.3. copy Virtual Reality Media in whole or part, except as expressly permitted in this Agreement;
  - 3.4. use trade secret information contained in Virtual Reality Media;
  - 3.5. resell, rent, loan or sublicense Virtual Reality Media;
  - 3.6. access Virtual Reality Media to build a competitive device or service or copy any features, functions, or graphics of Virtual Reality Media; or
  - 3.7. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Virtual Reality Media or any copies of Virtual Reality Media.
4. **Privacy.** Customer's use of the Virtual Reality Media is subject to the Axon Virtual Reality Privacy Policy, a current version of which is available at <https://www.axon.com/axonvrprivacypolicy>.
5. **Termination.** Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement.



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### Axon Evidence Local Software Appendix

This Appendix applies if Axon Evidence Local is included on the Quote.

1. **License.** Axon owns all executable instructions, images, icons, sound, and text in Axon Evidence Local. All rights are reserved to Axon. Axon grants a non-exclusive, royalty-free, worldwide right and license to use Axon Evidence Local. "Use" means storing, loading, installing, or executing Axon Evidence Local exclusively for data communication with an Axon Device. Customer may use Axon Evidence Local in a networked environment on computers other than the computer it installs Axon Evidence Local on, so long as each execution of Axon Evidence Local is for data communication with an Axon Device. Customer may make copies of Axon Evidence Local for archival purposes only. Axon shall retain all copyright, trademark, and proprietary notices in Axon Evidence Local on all copies or adaptations.
2. **Term.** The Quote will detail the duration of the Axon Evidence Local license, as well as any maintenance. The term will begin upon installation of Axon Evidence Local.
3. **License Restrictions.** All licenses will immediately terminate if Customer does not comply with any term of this Agreement. Customer may not use Axon Evidence Local for any purpose other than as expressly permitted by this Agreement. Customer may not:
  - 3.1. modify, tamper with, repair, or otherwise create derivative works of Axon Evidence Local;
  - 3.2. reverse engineer, disassemble, or decompile Axon Evidence Local or apply any process to derive the source code of Axon Evidence Local, or allow others to do the same;
  - 3.3. access or use Axon Evidence Local to avoid incurring fees or exceeding usage limits or quotas;
  - 3.4. copy Axon Evidence Local in whole or part, except as expressly permitted in this Agreement;
  - 3.5. use trade secret information contained in Axon Evidence Local;
  - 3.6. resell, rent, loan or sublicense Axon Evidence Local;
  - 3.7. access Axon Evidence Local to build a competitive device or service or copy any features, functions, or graphics of Axon Evidence Local; or
  - 3.8. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon or Axon's licensors on or within Axon Evidence Local or any copies of Axon Evidence Local.
4. **Support.** Axon may make available updates and error corrections ("**Updates**") to Axon Evidence Local. Axon will provide Updates electronically via the Internet or media as determined by Axon. Customer is responsible for establishing and maintaining adequate access to the Internet to receive Updates. Customer is responsible for maintaining the computer equipment necessary to use Axon Evidence Local. Axon may provide technical support of a prior release/version of Axon Evidence Local for six (6) months from when Axon made the subsequent release/version available.
5. **Termination.** Axon may terminate Customer's license immediately for Customer's failure to comply with any of the terms in this Agreement. Upon termination, Axon may disable Customer's right to login to Axon Evidence Local.



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### Axon Application Programming Interface Appendix

This Appendix applies if Axon's API Services or a subscription to Axon Cloud Services is included on the Quote.

#### 1. **Definitions.**

- 1.1. "**API Client**" means the software that acts as the interface between Customer's computer and the server, which is already developed or to be developed by Customer.
- 1.2. "**API Interface**" means software implemented by Customer to configure Customer's independent API Client Software to operate in conjunction with the API Service for Customer's authorized Use.
- 1.3. "**Axon Evidence Partner API, API or Axon API**" (collectively "**API Service**") means Axon's API which provides a programmatic means to access data in Customer's Axon Evidence account or integrate Customer's Axon Evidence account with other systems.
- 1.4. "**Use**" means any operation on Customer's data enabled by the supported API functionality.

#### 2. **Purpose and License.**

- 2.1. Customer may use API Service and data made available through API Service, in connection with an API Client developed by Customer. Axon may monitor Customer's use of API Service to ensure quality, improve Axon devices and services, and verify compliance with this Agreement. Customer agrees to not interfere with such monitoring or obscure from Axon Customer's use of API Service. Customer will not use API Service for commercial use.
- 2.2. Axon grants Customer a non-exclusive, non-transferable, non-sublicensable, worldwide, revocable right and license during the Term to use API Service, solely for Customer's Use in connection with Customer's API Client.
- 2.3. Axon reserves the right to set limitations on Customer's use of the API Service, such as a quota on operations, to ensure stability and availability of Axon's API. Axon will use reasonable efforts to accommodate use beyond the designated limits.

#### 3. **Configuration.** Customer will work independently to configure Customer's API Client with API Service for Customer's applicable Use. Customer will be required to provide certain information (such as identification or contact details) as part of the registration. Registration information provided to Axon must be accurate. Customer will inform Axon promptly of any updates. Upon Customer's registration, Axon will provide documentation outlining API Service information.

#### 4. **Customer Responsibilities.** When using API Service, Customer and its end users may not:

- 4.1. use API Service in any way other than as expressly permitted under this Agreement;
- 4.2. use in any way that results in, or could result in, any security breach to Axon;
- 4.3. perform an action with the intent of introducing any viruses, worms, defect, Trojan horses, malware, or any items of a destructive nature to Axon Devices and Services;
- 4.4. interfere with, modify, disrupt or disable features or functionality of API Service or the servers or networks providing API Service;
- 4.5. reverse engineer, decompile, disassemble, or translate or attempt to extract the source code from API Service or any related software;
- 4.6. create an API Interface that functions substantially the same as API Service and offer it for use by third parties;
- 4.7. provide use of API Service on a service bureau, rental or managed services basis or permit other individuals or entities to create links to API Service;
- 4.8. frame or mirror API Service on any other server, or wireless or Internet-based device;
- 4.9. make available to a third-party, any token, key, password or other login credentials to API Service;
- 4.10. take any action or inaction resulting in illegal, unauthorized or improper purposes; or
- 4.11. disclose Axon's API manual.

#### 5. **API Content.** All content related to API Service, other than Customer Content or Customer's API Client content, is considered Axon's API Content, including:

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- 5.1. the design, structure and naming of API Service fields in all responses and requests;
  - 5.2. the resources available within API Service for which Customer takes actions on, such as evidence, cases, users, or reports;
  - 5.3. the structure of and relationship of API Service resources; and
  - 5.4. the design of API Service, in any part or as a whole.
6. **Prohibitions on API Content**. Neither Customer nor its end users will use API content returned from the API Interface to:
- 6.1. scrape, build databases, or otherwise create permanent copies of such content, or keep cached copies longer than permitted by the cache header;
  - 6.2. copy, translate, modify, create a derivative work of, sell, lease, lend, convey, distribute, publicly display, or sublicense to any third-party;
  - 6.3. misrepresent the source or ownership; or
  - 6.4. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices).
7. **API Updates**. Axon may update or modify the API Service from time to time ("**API Update**"). Customer is required to implement and use the most current version of API Service and to make any applicable changes to Customer's API Client required as a result of such API Update. API Updates may adversely affect how Customer's API Client access or communicate with API Service or the API Interface. Each API Client must contain means for Customer to update API Client to the most current version of API Service. Axon will provide support for one (1) year following the release of an API Update for all depreciated API Service versions.





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### Advanced User Management Appendix

This Appendix applies if Axon Advanced User Management is included on the Quote.

1. **Scope.** Advanced User Management allows Customer to (a) utilize bulk user creation and management, (b) automate user creation and management through System for Cross-domain Identity Management ("**SCIM**"), and (c) automate group creation and management through SCIM.
2. **Advanced User Management Configuration.** Customer will work independently to configure Customer's Advanced User Management for Customer's applicable Use. Upon request, Axon will provide general guidance to Customer, including documentation that details the setup and configuration process.



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**FUSUS APPENDIX**

1. **Access.** Upon Axon granting Customer a subscription to FUSUS cloud services in the Quote, Customer may access and use FūsusONE Real Time Interoperability Solution services to for the purpose of viewing and managing Customer Content. Some Customer content contained in Axon’s Evidence.com may not be accessible or transferable to the FUSUS cloud services.
2. **Product Limits.** The following limitations apply to the below products:

	Lite	Basic	Pro	Enterprise	Enterprise Plus
<b>Total Number of Managed End Points</b>	150	150	500	1500	4500
<b>Max Number of Video Streams Connected</b>	0	150	500	1500	4500
<b>Indefinite Cloud Storage</b>		2TB	5TB	10TB	30TB

Overages may result in additional fees or the need to upgrade products.

3. **Disclaimer.** Customer is responsible for use of any internet access devices and/or all third-party hardware, software, services, telecommunication services (including Internet connectivity), or other items used by Customer to access the service (“Third-Party Components”) are the sole and exclusive responsibility of Customer, and Axon has no responsibility for such Third-party Components, FUSUS cloud services, or Customer relationships with such third parties. Customer agrees to at all times comply with the lawful terms and conditions of agreements with such third parties. Axon does not represent or warrant that the FUSUS cloud services and the Customer Content are compatible with any specific third-party hardware or software or any other Third-Party Components. Customer is responsible for providing and maintaining an operating environment as reasonably necessary to accommodate and access the FUSUS cloud services.
4. **Data Privacy.** Axon may collect, use, transfer, disclose and otherwise process Customer Content in the context of facilitating communication of data with Customer through their use of FUSUS cloud services FUSUS app (iOS or Android interface), complying with legal requirements, monitoring the Customer’s use of FUSUS systems, and undertaking data analytics. Customer Content saved in Axon Cloud Services is the sole property of Customer and may not be distributed by Axon to any third parties outside of the Customer’s organization without the Customer’s expressed written consent.



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**Axon Channel Services Appendix**

This Appendix applies if Customer purchases Axon Channel Service, as set forth on the Quote.

1. **Definitions.**
  - 1.1. **"Axon Digital Evidence Management System"** means Axon Evidence or Axon Evidence Local, as specified in the attached Channel Services Statement of Work.
  - 1.2. **"Active Channel"** means a third-party system that is continuously communicating with an Axon Digital Evidence Management System.
  - 1.3. **"Inactive Channel"** means a third-party system that will have a one-time communication to an Axon Digital Evidence Management System.
2. **Scope.** Customer currently has a third-party system or data repository from which Customer desires to share data with Axon Digital Evidence Management. Axon will facilitate the transfer of Customer's third-party data into an Axon Digital Evidence Management System or the transfer of Customer data out of an Axon Digital Evidence Management System as defined in the Channel Services Statement of Work ("**Channel Services SOW**"). Channel Services will not delete any Customer Content. Customer is responsible for verifying all necessary data is migrated correctly and retained per Customer policy.
3. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Channel Services SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
4. **Purpose and Use.** Customer is responsible for verifying Customer has the right to share data from and provide access to third-party system as it relates to the Services described in this Appendix and the Channel Services SOW. For Active Channels, Customer is responsible for any changes to a third-party system that may affect the functionality of the channel service. Any additional work required for the continuation of the Service may require additional fees. An Axon Field Engineer may require access to Customer's network and systems to perform the Services described in the Channel Services SOW. Customer is responsible for facilitating this access per all laws and policies applicable to Customer.
5. **Project Management.** Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
6. **Warranty.** Axon warrants that it will perform the Channel Services in a good and workmanlike manner.
7. **Monitoring.** Axon may monitor Customer's use of Channel Services to ensure quality, improve Axon devices and services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure from Axon Customer's use of channel services.
8. **Customer's Responsibilities.** Axon's successful performance of the Channel Services requires Customer:
  - 8.1. Make available its relevant systems for assessment by Axon (including making these systems available to Axon via remote access);
  - 8.2. Provide access to the building facilities and where Axon is to perform the Channel Services, subject to safety and security restrictions imposed by the Customer (including providing security passes or other necessary documentation to Axon representatives performing the Channel Services permitting them to enter and exit Customer premises with laptop personal computers and any other materials needed to perform the Channel Services);
  - 8.3. Provide all necessary infrastructure and software information (TCP/IP addresses, node names, and network configuration) for Axon to provide the Channel Services;
  - 8.4. Ensure all appropriate data backups are performed;
  - 8.5. Provide Axon with remote access to the Customer's network and third-party systems when required for Axon to perform the Channel Services;
  - 8.6. Notify Axon of any network or machine maintenance that may impact the performance of the Channel Services; and
  - 8.7. Ensure the reasonable availability by phone or email of knowledgeable staff, personnel, system administrators,



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and operators to provide timely, accurate, complete, and up-to-date documentation and information to Axon (these contacts are to provide background information and clarification of information required to perform the Channel Services).



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### VIEVU Data Migration Appendix

This Appendix applies if Customer purchases Migration services, as set forth on the Quote.

1. **Scope.** Customer currently has legacy data in the VIEVU solution from which Customer desires to move to Axon Evidence. Axon will work with Customer to copy legacy data from the VIEVU solution into Axon Evidence ("**Migration**"). Before Migration, Customer and Axon will work together to develop a Statement of Work ("**Migration SOW**") to detail all deliverables and responsibilities. The Migration will require the availability of Customer resources. Such resources will be identified in the SOW. On-site support during Migration is not required. Upon Customer's request, Axon will provide on-site support for an additional fee. Any request for on-site support will need to be pre-scheduled and is subject to Axon's resource availability.
  - 1.1. A small amount of unexposed data related to system information will not be migrated from the VIEVU solution to Axon Evidence. Upon request, some of this data can be manually exported before Migration and provided to Customer. The Migration SOW will provide further detail.
2. **Changes.** Axon is only responsible to perform the Services described in this Appendix and Migration SOW. Any additional services are out of scope. The Parties must document scope changes in a written and signed change order. Changes may require an equitable adjustment in the charges or schedule.
3. **Project Management.** Axon will assign a Project Manager to work closely with Customer's project manager and project team members and will be responsible for completing the tasks required to meet all contract deliverables on time and budget.
4. **Downtime.** There may be downtime during the Migration. The duration of the downtime will depend on the amount of data that Customer is migrating. Axon will work with Customer to minimize any downtime. Any VIEVU mobile application will need to be disabled upon Migration.
5. **Functionality Changes.** Due to device differences between the VIEVU solution and the Axon's Axon Evidence solution, there may be functionality gaps that will not allow for all migrated data to be displayed the same way in the user interface after Migration.
6. **Acceptance.** Once the Migration is complete, Axon will notify Customer and provide an acceptance form. Customer is responsible for verifying that the scope of the project has been completed and all necessary data is migrated correctly and retained per Customer policy. Customer will have ninety (90) days to provide Axon acceptance that the Migration was successful, or Axon will deem the Migration accepted.
  - 6.1. In the event Customer does not accept the Migration, Customer agrees to notify Axon within a reasonable time. Customer also agrees to allow Axon a reasonable time to resolve any issue. In the event Customer does not provide Axon with a written rejection of the Migration during these ninety (90) days, Customer may be charged for additional monthly storage costs. After Customer provides acceptance of the Migration, Axon will delete all data from the VIEVU solution ninety (90) days after the Migration.
7. **Post-Migration.** After Migration, the VIEVU solution may not be supported and updates may not be provided. Axon may end of life the VIEVU solution in the future. If Customer elects to maintain data within the VIEVU solution, Axon will provide Customer ninety (90) days' notice before ending support for the VIEVU solution.
8. **Warranty.** Axon warrants that it will perform the Migration in a good and workmanlike manner.
9. **Monitoring.** Axon may monitor Customer's use of Migration to ensure quality, improve Axon Devices and Services, prepare invoices based on the total amount of data migrated, and verify compliance with this Agreement. Customer agrees not to interfere with such monitoring or obscure Customer's use of Migration from Axon.



10.

**Axon Technical Account Manager Appendix**

This Appendix applies if Axon Support Engineer services are included on the Quote.

1. **Axon Technical Account Manager Payment.** Axon will invoice for Axon Technical Account Manager ("TAM") services, as outlined in the Quote, when the TAM commences work on-site at Customer.
2. **Full-Time TAM Scope of Services.**
  - 2.1. A Full-Time TAM will work on-site four (4) days per week, unless an alternate schedule or reporting location is mutually agreed upon by Axon and Customer.
  - 2.2. Customer's Axon sales representative and Axon's Customer Success team will work with Customer to define its support needs and ensure the Full-Time TAM has skills to align with those needs. There may be up to a six- (6-) month waiting period before the Full-Time TAM can work on-site, depending upon Customer's needs and availability of a Full-Time TAM.
  - 2.3. The purchase of Full-Time TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer, and Customer is current on all payments for the Full-Time TAM Service.
  - 2.4. The Full-Time TAM Service options are listed below:

**Ongoing System Set-up and Configuration**

Assisting with assigning cameras and registering docks  
 Maintaining **Customer's Axon Evidence account**  
 Connecting Customer to "Early Access" programs for new devices

**Account Maintenance**

Conducting on-site training on new features and **devices for Customer leadership team(s)**  
 Thoroughly documenting issues and workflows and suggesting new workflows to improve **the effectiveness of the Axon program**  
 Conducting weekly meetings to cover current issues and program status

**Data Analysis**

Providing on-demand Axon usage data to identify trends and insights for improving daily workflows  
 Comparing **Customer's Axon usage and trends to peers to establish best practices**  
 Proactively monitoring the health of Axon equipment and coordinating returns when needed

**Direct Support**

Providing on-site, Tier 1 and Tier 2 (as defined in Axon's Service Level Agreement) technical support for Axon Devices  
 Proactively monitoring the health of **Axon equipment**  
 Creating and monitoring RMAs **on-site**  
 Providing Axon app support  
 Monitoring and testing new firmware and workflows before they are released to Customer's production environment

**Customer Advocacy**

Coordinating bi-annual **voice of customer meetings with Axon's Device Management team**  
 Recording and tracking Customer feature requests and major bugs

3. **Regional TAM Scope of Services**
  - 3.1. A Regional TAM will work on-site for three (3) consecutive days per quarter. Customer must schedule the on-site days at least two (2) weeks in advance. The Regional TAM will also be available by phone and email during regular business hours up to eight (8) hours per week.
  - 3.2. There may be up to a six- (6-) month waiting period before Axon assigns a Regional TAM to Customer, depending upon the availability of a Regional TAM.
  - 3.3. The purchase of Regional TAM Services includes two (2) complimentary Axon Accelerate tickets per year of the Agreement, so long as the TAM has started work at Customer and Customer is current on all payments for the Regional TAM Service.
  - 3.4. The Regional TAM service options are listed below:



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### Account Maintenance

Conducting remote training on new features and **devices for Customer's leadership**

Thoroughly documenting issues and workflows and suggesting new **workflows to improve the effectiveness of the Axon program**

Conducting weekly conference calls to cover **current issues and program status**

Visiting Customer quarterly (up to 3 consecutive days) to perform a quarterly business review, discuss Customer's goals for your Axon program, and continue to ensure a successful deployment of Axon Devices

### Direct Support

**Providing remote, Tier 1 and Tier 2 (As defined Axon's Service Level Agreement) technical support for Axon Devices**

Creating and monitoring RMAs remotely

### Data Analysis

Providing quarterly Axon **usage data to identify trends and program efficiency opportunities**

Comparing an **Customer's Axon usage and trends to peers to establish best practices**

Proactively monitoring the health of Axon equipment and coordinating returns when needed

### Customer Advocacy

Coordinating bi-yearly Voice of **Customer meetings with Device Management team**

Recording and tracking Customer feature requests and major bugs

4. **Out of Scope Services.** The TAM is responsible to perform only the Services described in this Appendix. Any additional Services discussed or implied that are not defined explicitly in this Appendix will be considered out of the scope.
5. **TAM Leave Time.** The TAM will be allowed up seven (7) days of sick leave and up to fifteen (15) days of vacation time per each calendar year. The TAM will work with Customer to coordinate any time off and will provide Customer with at least two (2) weeks' notice before utilizing any vacation days.



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### Axon Investigate Appendix

If the Quote includes Axon's On Prem Video Suite known as Axon Investigate or Third Party Video Support License, the following appendix shall apply.

1. **License Grant.** Subject to the terms and conditions specified below and upon payment of the applicable fees set forth in the Quote, Axon grants to Customer a nonexclusive, nontransferable license to install, use, and display the Axon Investigate software ("**Software**") solely for its own internal use only and for no other purpose, for the duration of subscription term set forth in the Quote. This Agreement does not grant Customer any right to enhancements or updates, but if such are made available to Customer and obtained by Customer they shall become part of the Software and governed by the terms of this Agreement.
2. **Third-Party Licenses.** Axon licenses several third-party codecs and applications that are integrated into the Software. Users with an active support contract with Axon are granted access to these additional features. By accepting this agreement, Customer agrees to and understands that an active support contract is required for all of the following features: DNxHD output formats, decoding files via the "fast indexing" method, proprietary file metadata, telephone and email support, and all future updates to the software. If Customer terminates the annual support contract with Axon, the features listed above will be disabled within the Software. It is recommended that users remain on an active support contract to maintain the full functionality of the Software.
3. **Restrictions on Use.** Customer may not permit any other person to use the Software unless such use is in accordance with the terms of this Agreement. Customer may not modify, translate, reverse engineer, reverse compile, decompile, disassemble or create derivative works with respect to the Software, except to the extent applicable laws specifically prohibit such restrictions. Customer may not rent, lease, sublicense, grant a security interest in or otherwise transfer Customer's rights to or to use the Software. Any rights not granted are reserved to Axon.
4. **Term.** For purchased perpetual Licenses only—excluding Licenses leased for a pre-determined period, evaluation licenses, companion licenses, as well as temporary licenses--the license shall be perpetual unless Customer fails to observe any of its terms, in which case it shall terminate immediately, and without additional prior notice. The terms of Paragraphs 1, 2, 3, 5, 6, 8 and 9 shall survive termination of this Agreement. For licenses leased for a pre-determined period, for evaluation licenses, companion licenses, as well as temporary licenses, the license is granted for a period beginning at the installation date and for the duration of the evaluation period or temporary period as agreed between Axon and Customer.
5. **Title.** Axon and its licensors shall have sole and exclusive ownership of all right, title, and interest in and to the Software and all changes, modifications, and enhancements thereof (including ownership of all trade secrets and copyrights pertaining thereto), regardless of the form or media in which the original or copies may exist, subject only to the rights and privileges expressly granted by Axon. This Agreement does not provide Customer with title or ownership of the Software, but only a right of limited use.
6. **Copies.** The Software is copyrighted under the laws of the United States and international treaty provisions. Customer may not copy the Software except for backup or archival purposes, and all such copies shall contain all Axon's notices regarding proprietary rights as contained in the Software as originally provided to Customer. If Customer receives one copy electronically and another copy on media, the copy on media may be used only for archival purposes and this license does not authorize Customer to use the copy of media on an additional server.
7. **Actions Required Upon Termination.** Upon termination of the license associated with this Agreement, Customer agrees to destroy all copies of the Software and other text and/or graphical documentation, whether in electronic or printed format, that describe the features, functions and operation of the Software that are provided by Axon to Customer ("**Software Documentation**") or return such copies to Axon. Regarding any copies of media containing regular backups of Customer's computer or computer system, Customer agrees not to access such media for the purpose of recovering the Software or online Software Documentation.
8. **Export Controls.** None of the Software, Software Documentation or underlying information may be downloaded or otherwise exported, directly or indirectly, without the prior written consent, if required, of the office of Export Administration of the United States, Department of Commerce, nor to any country to which the U.S. has embargoed goods, to any person on the U.S. Treasury Department's list of Specially Designated Nations, or the U.S. Department of Commerce's Table of Denials.
9. **U.S. Government Restricted Rights.** The Software and Software Documentation are Commercial Computer Software provided with Restricted Rights under Federal Acquisition Regulations and Customer supplements to them. Use, duplication or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFAR 255.227-7013 et. Seq. or 252.211-7015, or

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subparagraphs (a) through (d) of the Commercial Computer Software Restricted Rights at FAR 52.227-19, as applicable, or similar clauses in the NASA FAR Supplement. Contractor/manufacturer is Axon Enterprise, Inc., 17800 North 85th Street, Scottsdale, Arizona 85255.



**My90 Terms of Use Appendix**

**Definitions.**

- 1.1. **"My90"** means Axon's proprietary platform and methodology to obtain and analyze feedback, and other related offerings, including, without limitation, interactions between My90 and Axon products.
- 1.2. **"Recipient Contact Information"** means contact information, as applicable, including phone number or email address (if available) of the individual whom Customer would like to obtain feedback.
- 1.3. **"Customer Data"** means
  - 1.3.1. "My90 Customer Content" which means data, including Recipient Contact Information, provided to My90 directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology. My90 Customer Content does not include My90 Non-Content Data.
  - 1.3.2. "My90 Non-Content Data" which means data, configuration, and usage information about Customer's My90 tenant, and client software, users, and survey recipients that is Processed (as defined in Section 1.6 of this Appendix) when using My90 or responding to a My90 Survey. My90 Non-Content Data includes data about users and survey recipients captured during account management and customer support activities. My90 Non-Content Data does not include My90 Customer Content.
  - 1.3.3. "Survey Response" which means survey recipients' response to My90 Survey.
- 1.4. **"My90 Data"** means
  - 1.4.1. "My90 Survey" which means surveys, material(s) or content(s) made available by Axon to Customer and survey recipients within My90.
  - 1.4.2. "Aggregated Survey Response" which means Survey Response that has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to, a particular individual.
- 1.5. **"Personal Data"** means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
- 1.6. **"Processing"** means any operation or set of operations which is performed on data or on sets of data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure, or destruction.
- 1.7. **"Sensitive Personal Data"** means Personal Data that reveals an individual's health, racial or ethnic origin, sexual orientation, disability, religious or philosophical beliefs, or trade union membership.
2. **Access.** Upon Axon granting Customer a subscription to My90, Customer may access and use My90 to store and manage My90 Customer Content, and applicable My90 Surveys and Aggregated Survey Responses. This Appendix is subject to the Terms and Conditions of Axon's Master Service and Purchasing Agreement or in the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern.
3. **IP address.** Axon will not store survey respondents' IP address.
4. **Customer Owns My90 Customer Content.** Customer controls or owns all right, title, and interest in My90 Customer Content. Except as outlined herein, Axon obtains no interest in My90 Customer Content, and My90 Customer Content is not Axon's business records. Except as set forth in this Agreement, Customer is responsible for uploading, sharing, managing, and deleting My90 Customer Content. Axon will only have access to My90 Customer Content for the limited purposes set forth herein. Customer agrees to allow Axon access to My90 Customer Content to (a) perform troubleshooting, maintenance, or diagnostic screenings; and (b) enforce this Agreement or policies governing use of My90 and other Axon products.



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5. **Details of the Processing.** The nature and purpose of the Processing under this Appendix are further specified in Schedule 1 Details of the Processing, to this Appendix.
6. **Security.** Axon will implement commercially reasonable and appropriate measures to secure Customer Data against accidental or unlawful loss, access, or disclosure. Axon will maintain a comprehensive information security program to protect Customer Data including logical, physical access, vulnerability, risk, and configuration management; incident monitoring and response; security education; and data protection. Axon will not treat Customer Data in accordance with FBI CJIS Security Policy requirements and does not agree to the CJIS Security Addendum for this engagement or any other security or privacy related commitments that have been established between Axon and Customer, such as ISO 27001 certification or SOC 2 Reporting.
7. **Privacy.** Customer use of My90 is subject to the My90 Privacy Policy, a current version of which is available at <https://www.axon.com/legal/my90privacypolicy>. Customer agrees to allow Axon access to My90 Non-Content Data from Customer to (a) perform troubleshooting, maintenance, or diagnostic screenings; (b) provide, develop, improve, and support current and future Axon products including My90 and related services; and (c) enforce this Agreement or policies governing the use of My90 or other Axon products.
8. **Location of Storage.** Axon may transfer Customer Data to third-party subcontractors for Processing. Axon will determine the locations for Processing of Customer Data. For all Customer, Axon will Process and store Customer Data within the country Customer is based. Ownership of My90 Customer Content remains with Customer.
9. **Required Disclosures.** Axon will not disclose Customer Data that Customer shares with Axon except as compelled by a court or administrative body or required by any law or regulation. Axon will notify Customer if any disclosure request is received for Customer Data so Customer may file an objection with the court or administrative body, unless prohibited by law.
10. **Data Sharing.** Axon may share data only with entities that control or are controlled by or under common control of Axon, and as described below:
  - 10.1. Axon may share Customer Data with third parties it employs to perform tasks on Axon's behalf to provide products or services to Customer.
  - 10.2. Axon may share Aggregated Survey Response with third parties, such as other Axon customers, local city agencies, private companies, or members of the public that are seeking a way to collect analysis on general policing and community trends. Aggregated Survey Response will not be reasonably capable of being associated with or reasonably be linked directly or indirectly to a particular individual.
11. **License and Intellectual Property.** Customer grants Axon, its affiliates, and assignees the irrevocable, perpetual, fully paid, royalty-free, and worldwide right and license to use Customer Data for internal use including but not limited to analysis and creation of derivatives. Axon may not release Customer Data to any third party under this right that is not aggregated and de-identified. Customer acknowledges that Customer will have no intellectual property right in any media, good or service developed or improved by Axon. Customer acknowledges that Axon may make any lawful use of My90 Data and any derivative of Customer Data including, without limitation, the right to monetize, redistribute, make modification of, and make derivatives of the surveys, survey responses and associated data, and Customer will have no intellectual property right in any good, service, media, or other product that uses My90 Data.
12. **Customer Use of Aggregated Survey Response.** Axon will make available to Customer Aggregated Survey Response and rights to use for any Customer purpose.
13. **Data Subject Rights.** Taking into account the nature of the Processing, Axon shall assist Customer by appropriate technical and organizational measures, insofar as this is reasonable, for the fulfillment of Customer's obligation to respond to a Data Subject Request regarding any Personal Data contained within My90 Customer Content. If in regard to My90 Customer Content, Axon receives a Data Subject Request from Customer's data subject to exercise one or more of its rights under applicable Data Protection Law, Axon will redirect the data subject within seventy-two (72) hours, to make its request directly to Customer. Customer will be responsible for responding to any such request.
14. **Assistance with Requests Related to My90 Customer Content.** With regard to the processing of My90 Customer Content, Axon shall, if not prohibited by applicable law, notify Customer without delay after receipt, if Axon: (a) receives a request for information from the Supervisory Authority or any other competent authority regarding My90 Customer Content; (b) receives a complaint or request from a third party regarding the obligations of Customer or Axon under applicable Data Protection Law; or (c) receives any other communication which directly or indirectly pertains to My90 Customer Content or the Processing or protection of My90 Customer Content. Axon



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shall not respond to such requests, complaints, or communications, unless Customer has given Axon written instructions to that effect or if such is required under a statutory provision. In the latter case, prior to responding to the request, Axon shall notify Customer of the relevant statutory provision and Axon shall limit its response to what is necessary to comply with the request.

- 15. Axon Evidence Partner Sharing.** If Axon Evidence partner sharing is used to share My90 Customer Content, Customer will manage the data sharing partnership with Axon and access to allow only for authorized data sharing with Axon. Customer acknowledges that any applicable audit trail on the original source data will not include activities and processing performed against the instances, copies or clips that has been shared with Axon. Customer also acknowledges that the retention policy from the original source data is not applied to any data shared with Axon. Except as provided herein, data shared with Axon may be retained indefinitely by Axon.
- 16. Data Retention.** Phone numbers provided to Axon directly by Customer or at their direction, or by permitting My90 to access or connect to an information system or similar technology will be retained for twenty-four (24) hours. Axon will not delete Aggregated Survey Response for four (4) years following termination of this Agreement. There will be no functionality of My90 during these four (4) years other than the ability to submit a request to retrieve Aggregated Survey Response. Axon has no obligation to maintain or provide Aggregated Survey Response after these four years and may thereafter, unless legally prohibited, delete all Aggregated Survey Response.
- 17. Termination.** Termination of an My90 Agreement will not result in the removal or modification of previously shared My90 Customer Content or the potential monetization of Survey Response and Aggregated Survey Response.
- 18. Managing Data Shared.** Customer is responsible for:
- 18.1. Ensuring My90 Customer Content is appropriate for use in My90. This includes, prior to sharing: (a) applying any and all required redactions, clipping, removal of metadata, logs, etc. and (b) coordination with applicable public disclosure officers and related legal teams;
  - 18.2. Ensuring that only My90 Customer Content that is authorized to be shared for the purposes outlined is shared with Axon. Customer will periodically monitor or audit this shared data;
  - 18.3. Using an appropriately secure data transfer mechanism to provide My90 Customer Content to Axon;
  - 18.4. Immediately notifying Axon if My90 Customer Content that is not authorized for sharing has been shared. Axon may not be able to immediately retrieve or locate all instances, copies or clips of My90 Customer Content in the event Customer requests to un-share previously shared My90 Customer Content;
- 19. Prior to enrollment in My90.** Prior to enrolling in My90, Customer will:
- 19.1. determine how to use My90 in accordance with applicable laws and regulations including but not limited to consents, use of info or other legal considerations;
  - 19.2. develop a set of default qualification criteria of what My90 Customer Content may be shared with Axon; and
  - 19.3. assign responsibilities for managing what My90 Customer Content is shared with Axon and educate users on what data may or not be shared with Axon.
- 20. Customer Responsibilities.** Customer is responsible for:
- 20.1. ensuring no My90 Customer Content or Customer end user's use of My90 Customer Content or My90 violates this Agreement or applicable laws;
  - 20.2. providing, and will continue to provide, all notices and has obtained, and will continue to obtain, all consents and rights necessary under applicable laws for Axon to process Customer Data in accordance with this Agreement; and
  - 20.3. maintaining necessary computer equipment and Internet connections for use of My90. If Customer becomes aware of any violation of this Agreement by an end user, Customer will immediately terminate that end user's access to My90. Customer will also maintain the security of end usernames and passwords and security and access by end users to My90 Customer Content. Customer is responsible for ensuring the configuration and utilization of My90 meets applicable Customer regulations and standards. Customer may not sell, transfer, or sublicense access to any other entity or person. Customer shall contact Axon



## Master Services and Purchasing Agreement for Customer

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immediately if an unauthorized party may be using Customer's account or My90 Customer Content or if account information is lost or stolen.

21. **Suspension.** Axon may temporarily suspend Customer's or any end user's right to access or use any portion or all of My90 immediately upon notice, if Customer or end user's use of or registration for My90 may (a) pose a security risk to Axon products including My90, or any third-party; (b) adversely impact My90, the systems, or content of any other customer; (c) subject Axon, Axon's affiliates, or any third-party to liability; or (d) be fraudulent. Customer remains responsible for all fees, if applicable, incurred through suspension. Axon will not delete My90 Customer Content or Aggregated Survey Response because of suspension, except as specified in this Agreement.
22. **My90 Restrictions.** Customer and Customer end users (including employees, contractors, agents, officers, volunteers, and directors), may not, or may not attempt to:
- 22.1. copy, modify, tamper with, repair, or create derivative works of any part of My90;
  - 22.2. reverse engineer, disassemble, or decompile My90 or apply any process to derive any source code included in My90, or allow others to do the same;
  - 22.3. access or use My90 with the intent to gain unauthorized access, avoid incurring fees or exceeding usage limits or quotas;
  - 22.4. use trade secret information contained in My90, except as expressly permitted in this Agreement;
  - 22.5. access My90 to build a competitive product or service or copy any features, functions, or graphics of My90;
  - 22.6. remove, alter, or obscure any confidentiality or proprietary rights notices (including copyright and trademark notices) of Axon's or Axon's licensors on or within My90; or
  - 22.7. use My90 to store or transmit infringing, libelous, or other unlawful or tortious material; to store or transmit material in violation of third-party privacy rights; or to store or transmit malicious code.



## Master Services and Purchasing Agreement for Customer

### Schedule 1- Details of the Processing

1. **Nature and Purpose of the Processing.** To help Customer obtain feedback from individuals, such as members of their community, staff, or officers. Features of My90 may include:
  - 1.1. Survey Tool where Customer may create, distribute, and analyze feedback from individuals it designates. Customer may designate members of the community, staff or officers from whom they would like to obtain feedback;
  - 1.2. Creation of custom forms for surveys. Customer may select questions from a list of pre-drafted questions or create their own;
  - 1.3. Distribution of survey via multiple distribution channels such as text message;
  - 1.4. Ability to access and analyze Survey Response. Axon may also provide Customer Aggregated Survey Responses which contain analysis and insights from the Survey Response;
  - 1.5. Direct integrations into information systems including Computer Aided Dispatch ("**CAD**"). This will enable Customer to share contact information easily and quickly with Axon of any individuals from whom it wishes to obtain feedback, enabling Axon to communicate directly with these individuals;
  - 1.6. Data Dashboard Beta Test ("**Data Dashboard**") where Survey Response and Aggregated Survey Response will be displayed for Customer use. Customer will be able to analyze, interpret, and share results of the Survey Response. My90 may provide beta versions of the Data Dashboard that are specifically designed for Customer to test before they are publicly available;
  - 1.7. Survey Responses will be aggregated and de-identified and may be subsequently distributed and disclosed through various mediums to: (1) Customer; (2) other Axon Customer; (3) private companies; and (4) members of the public. The purpose of disclosure is to provide ongoing insights and comparisons on general policing and community trends. Prior to disclosing this information, Axon will ensure that the Survey Response has been de-identified and aggregated or transformed so that it is no longer reasonably capable of being associated with, or could reasonably be linked directly or indirectly to a particular individual; and
  - 1.8. Provide services and materials to engage Customer stakeholders, market the partnership to the public, and facilitate training.



## Master Services and Purchasing Agreement for Customer

### Axon Event Offer Appendix

If the Agreement includes the provision of, or Axon otherwise offers, ticket(s), travel and/or accommodation for select events hosted by Axon ("Axon Event"), the following shall apply:

1. **General.** Subject to the terms and conditions specified below and those in the Agreement, Axon may provide Customer with one or more offers to fund Axon Event ticket(s), travel and/or accommodation for Customer-selected employee(s) to attend one or more Axon Events. By entering into the Agreement, Customer warrants that it is appropriate and permissible for Customer to receive the referenced Axon Event offer(s) based on Customer's understanding of the terms and conditions outlined in this Axon Event Offer Appendix.
2. **Attendee/Employee Selection.** Customer shall have sole and absolute discretion to select the Customer employee(s) eligible to receive the ticket(s), travel and/or accommodation that is the subject of any Axon Event offer(s).
3. **Compliance.** It is the intent of Axon that any and all Axon Event offers comply with all applicable laws, regulations and ethics rules regarding contributions, including gifts and donations. Axon's provision of ticket(s), travel and/or accommodation for the applicable Axon Event to Customer is intended for the use and benefit of Customer in furtherance of its goals, and not the personal use or benefit of any official or employee of Customer. Axon makes this offer without seeking promises or favoritism for Axon in any bidding arrangements. Further, no exclusivity will be expected by either party in consideration for the offer. Axon makes the offer with the understanding that it will not, as a result of such offer, be prohibited from any procurement opportunities or be subject to any reporting requirements. If Customer's local jurisdiction requires Customer to report or disclose the fair market value of the benefits provided by Axon, Customer shall promptly contact Axon to obtain such information, and Axon shall provide the information necessary to facilitate Customer's compliance with such reporting requirements.
4. **Assignability.** Customer may not sell, transfer, or assign Axon Event ticket(s), travel and/or accommodation provided under the Agreement.
5. **Availability.** The provision of all offers of Axon Event ticket(s), travel and/or accommodation is subject to availability of funds and resources. Axon has no obligation to provide Axon Event ticket(s), travel and/or accommodation.
6. **Revocation of Offer.** Axon reserves the right at any time to rescind the offer of Axon Event ticket(s), travel and/or accommodation to Customer if Customer or its selected employees fail to meet the prescribed conditions or if changes in circumstances render the provision of such benefits impractical, inadvisable, or in violation of any applicable laws, regulations, and ethics rules regarding contributions, including gifts and donations



## Master Services and Purchasing Agreement for Customer

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### Axon Training Pod

1. **Customer Responsibilities.** Customer is responsible for: (i) all permits to use the Axon Training Pod; (ii) complying with all applicable laws pertaining to the use of the Axon Training Pod; (iii) any maintenance required for the Axon Training Pod; and (iv) disposal of the Axon Training Pod.
2. **Warranties. TO THE EXTENT NOT PROHIBITED BY LAW, AXON TRAINING POD IS SOLD "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.**
3. **Placement.** Axon will make its best efforts to work with Customer on the initial placement of the Axon Training Pod. After the initial placement, it is the Customer's responsibility to make any adjustments to the Axon Training Pod's placement.



EXHIBIT B  
CONTRACTOR'S QUOTE

[See attached.]



**Axon Enterprise, Inc.**  
 17800 N 85th St.  
 Scottsdale, Arizona 85255  
 United States  
 VAT: 86-0741227  
 Domestic: (800) 978-2737  
 International: +1.800.978.2737

Q-567068-45568.852BM

Issued: 10/03/2024

Quote Expiration: 12/15/2024

Estimated Contract Start Date: 01/01/2025

Account Number: 109685

Payment Terms: N30

Delivery Method:

SHIP TO	BILL TO
Broomfield Police Dept. - CO 7 Descombes Dr Broomfield, CO 80020-2495 USA	Broomfield Police Dept. - CO 7 Descombes Dr Broomfield CO 80020-2495 USA Email:

SALES REPRESENTATIVE	PRIMARY CONTACT
Brian Moutinho Phone: +1 9168062275 Email: bmoutinho@axon.com Fax:	Jessica Qumby-Harris Phone: (303) 464-5729 Email: jqumby@broomfield.org Fax:

**Quote Summary**

Program Length	60 Months
<b>TOTAL COST</b>	<b>\$3,503,118.00</b>
<b>ESTIMATED TOTAL W/ TAX</b>	<b>\$3,503,118.00</b>

**Discount Summary**

Average Savings Per Year	\$386,647.34
<b>TOTAL SAVINGS</b>	<b>\$1,933,236.68</b>

**Payment Summary**

<b>Date</b>	<b>Subtotal</b>	<b>Tax</b>	<b>Total</b>
Dec 2024	\$700,623.60	\$0.00	\$700,623.60
Dec 2025	\$700,623.60	\$0.00	\$700,623.60
Dec 2026	\$700,623.60	\$0.00	\$700,623.60
Dec 2027	\$700,623.60	\$0.00	\$700,623.60
Dec 2028	\$700,623.60	\$0.00	\$700,623.60
<b>Total</b>	<b>\$3,503,118.00</b>	<b>\$0.00</b>	<b>\$3,503,118.00</b>

Quote Unbundled Price: \$5,436,354.68  
 Quote List Price: \$4,224,665.48  
 Quote Subtotal: \$3,503,118.00

**Pricing**

*All deliverables are detailed in Delivery Schedules section lower in proposal*

Item	Description	Qty	Term	Unbundled	List Price	Net Price	Subtotal	Tax	Total
<b>Program</b>									
BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	60	\$12.19	\$12.40	\$0.00	\$0.00	\$0.00	\$0.00
BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	60	\$73.05	\$36.07	\$0.00	\$0.00	\$0.00	\$0.00
T00001	AB4 FLEX POV TAP BUNDLE	22	60	\$6.52	\$7.37	\$0.00	\$0.00	\$0.00	\$0.00
B00022	BUNDLE - UNLIMITED PLUS	5	60	\$344.39	\$238.32	\$226.40	\$67,920.00	\$0.00	\$67,920.00
IR2CA	Interview Room 2 Camera Standard	1	60	\$827.71	\$742.04	\$0.00	\$0.00	\$0.00	\$0.00
M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	60	\$391.25	\$297.90	\$272.60	\$3,402,048.00	\$0.00	\$3,402,048.00
<b>A la Carte Hardware</b>									
74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2			\$132.00	\$0.00	\$0.00	\$0.00	\$0.00
50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2			\$243.31	\$0.00	\$0.00	\$0.00	\$0.00
50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2			\$397.51	\$0.00	\$0.00	\$0.00	\$0.00
50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2			\$685.49	\$0.00	\$0.00	\$0.00	\$0.00
50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2			\$243.31	\$0.00	\$0.00	\$0.00	\$0.00
50298	AXON INTERVIEW - CAMERA - OVERT DOME	2			\$992.92	\$0.00	\$0.00	\$0.00	\$0.00
H00002	AB4 Multi Bay Dock Bundle	32			\$1,638.90	\$0.00	\$0.00	\$0.00	\$0.00
H00003	AB4 1-Bay Dock Bundle	20			\$229.00	\$0.00	\$0.00	\$0.00	\$0.00
H00004	AB4 FLEX POV HARDWARE BUNDLE	22			\$249.00	\$0.00	\$0.00	\$0.00	\$0.00
H00001	AB4 Camera Bundle	213			\$849.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>A la Carte Software</b>									
50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	60		\$111.75	\$0.00	\$0.00	\$0.00	\$0.00
BasicLicense	Basic License Bundle	34	60		\$16.27	\$16.25	\$33,150.00	\$0.00	\$33,150.00
<b>A la Carte Services</b>									
101267	AXON VR - PSO - FULL INSTALLATION	1			\$12,000.00	\$0.00	\$0.00	\$0.00	\$0.00
85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2			\$7,450.00	\$0.00	\$0.00	\$0.00	\$0.00
85144	AXON BODY - PSO - STARTER	1			\$13,000.00	\$0.00	\$0.00	\$0.00	\$0.00
85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1			\$6,786.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>Total</b>							<b>\$3,503,118.00</b>	<b>\$0.00</b>	<b>\$3,503,118.00</b>

**Delivery Schedule**

**Hardware**

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
AB4 1-Bay Dock Bundle	100201	AXON BODY 4 - DOCK - SINGLE BAY	20	1	12/01/2024
AB4 1-Bay Dock Bundle	71104	AXON - DOCK/DATAPORT POWERCORD - NORTH AMERICA	20	1	12/01/2024
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK	213	1	12/01/2024

**Hardware**

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
		RAPIDLOCK			
AB4 Camera Bundle	100147	AXON BODY 4 - CAMERA - NA US FIRST RESPONDER BLK RAPIDLOCK	6	1	12/01/2024
AB4 Camera Bundle	100466	AXON BODY 4 - CABLE - USB-C TO USB-C	235	1	12/01/2024
AB4 Camera Bundle	74028	AXON BODY - MOUNT - WING CLIP RAPIDLOCK	235	1	12/01/2024
AB4 FLEX POV HARDWARE BUNDLE	100200	AXON BODY 4 - FLEX POV MODULE	22	1	12/01/2024
AB4 FLEX POV HARDWARE BUNDLE	100852	AXON BODY 4 - C-CLIP - POV	22	1	12/01/2024
AB4 FLEX POV HARDWARE BUNDLE	100855	AXON BODY 4 - MOUNT - POV EPAULETTE	25	1	12/01/2024
AB4 FLEX POV HARDWARE BUNDLE	100958	AXON BODY 4 - FLEX POV MODULE CABLE 48 IN	22	1	12/01/2024
AB4 Multi Bay Dock Bundle	100206	AXON BODY 4 - 8 BAY DOCK	32	1	12/01/2024
AB4 Multi Bay Dock Bundle	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	32	1	12/01/2024
AB4 Multi Bay Dock Bundle	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	32	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100126	AXON VR - TACTICAL BAG	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	208	2	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100390	AXON TASER 10 - HANDLE - YELLOW CLASS 3R	6	2	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	208	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100393	AXON TASER 10 - MAGAZINE - LIVE DUTY BLACK	6	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100394	AXON TASER 10 - MAGAZINE - HALT TRAINING BLUE	16	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100395	AXON TASER 10 - MAGAZINE - LIVE TRAINING PURPLE	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100396	AXON TASER 10 - MAGAZINE - INERT RED	30	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	4160	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	1250	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100401	AXON TASER 10 - CARTRIDGE - INERT	300	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100611	AXON TASER 10 - SAFARILAND HOLSTER - RH	208	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100623	AXON TASER - TRAINING - ENHANCED HALT SUIT V2	4	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	208	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100748	AXON VR - CONTROLLER - TASER 10	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101124	AXON VR - HOLSTER - T10 BLACKHAWK GREY - RH	6	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101125	AXON VR - HOLSTER - T10 BLACKHAWK GREY - LH	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101294	AXON VR - TABLET	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101300	AXON VR - TABLET CASE	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	36	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	208	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20018	AXON TASER - BATTERY PACK - TACTICAL	6	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	9	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	70033	AXON - DOCK WALL MOUNT - BRACKET ASSY	3	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71019	AXON BODY - DOCK POWERCORD - NORTH AMERICA	3	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	416	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	74200	AXON TASER - DOCK - SIX BAY PLUS CORE	3	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80087	AXON TASER - TARGET - CONDUCTIVE PROFESSIONAL RUGGEDIZED	3	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80090	AXON TASER - TARGET FRAME - PROFESSIONAL 27.5 IN X 75 IN	3	1	12/01/2024
BUNDLE - UNLIMITED PLUS	100126	AXON VR - TACTICAL BAG	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	100681	AXON SIGNAL - SIDEARM SENSOR ONLY	5	1	12/01/2024
BUNDLE - UNLIMITED PLUS	100748	AXON VR - CONTROLLER - TASER 10	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	100832	AXON VR - CONTROLLER - HANDGUN VR19H	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	101124	AXON VR - HOLSTER - T10 BLACKHAWK GREY - RH	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	101294	AXON VR - TABLET	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	101300	AXON VR - TABLET CASE	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	20378	AXON VR - HEADSET - HTC FOCUS 3	1	1	12/01/2024
BUNDLE - UNLIMITED PLUS	71044	AXON SIGNAL - BATTERY - CR2430 SINGLE PACK	10	1	12/01/2024

**Hardware**

Bundle	Item	Description	QTY	Shipping Location	Estimated Delivery Date
Interview Room 2 Camera Standard	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	1	1	12/01/2024
Interview Room 2 Camera Standard	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	1	1	12/01/2024
Interview Room 2 Camera Standard	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	1	1	12/01/2024
Interview Room 2 Camera Standard	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	1	1	12/01/2024
Interview Room 2 Camera Standard	50221	AXON INTERVIEW - POE SWITCH - 24 PORT	1	1	12/01/2024
Interview Room 2 Camera Standard	50294	AXON INTERVIEW - SERVER - LITE	2	1	12/01/2024
Interview Room 2 Camera Standard	50298	AXON INTERVIEW - CAMERA - OVERT DOME	1	1	12/01/2024
Interview Room 2 Camera Standard	50322	AXON INTERVIEW - TOUCH PANEL PRO	1	1	12/01/2024
Interview Room 2 Camera Standard	74056	AXON INTERVIEW - TOUCH PANEL WALL MOUNT	1	1	12/01/2024
Interview Room 2 Camera Standard	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	1	1	12/01/2024
A la Carte	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	1	12/01/2024
A la Carte	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	1	12/01/2024
A la Carte	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	1	12/01/2024
A la Carte	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	1	12/01/2024
A la Carte	50298	AXON INTERVIEW - CAMERA - OVERT DOME	2	1	12/01/2024
A la Carte	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2	1	12/01/2024
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	630	1	12/01/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	1670	1	12/01/2025
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	620	1	12/01/2026
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	1660	1	12/01/2026
Body Worn Camera Multi-Bay Dock TAP Bundle	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	5	1	06/01/2027
Body Worn Camera Single-Bay Dock TAP Bundle	73313	AXON BODY - TAP REFRESH 1 - DOCK SINGLE BAY	20	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	9	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	9	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	9	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	9	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	214	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	26	1	06/01/2027
BUNDLE - UNLIMITED PLUS	100210	AXON VR - TAP REFRESH 1 - TABLET	1	1	06/01/2027
BUNDLE - UNLIMITED PLUS	101009	AXON VR - TAP REFRESH 1 - SIDEARM CONTROLLER	1	1	06/01/2027
BUNDLE - UNLIMITED PLUS	101012	AXON VR - TAP REFRESH 1 - CONTROLLER	1	1	06/01/2027
BUNDLE - UNLIMITED PLUS	20373	AXON VR - TAP REFRESH 1 - HEADSET	1	1	06/01/2027
BUNDLE - UNLIMITED PLUS	73309	AXON BODY - TAP REFRESH 1 - CAMERA	5	1	06/01/2027
BUNDLE - UNLIMITED PLUS	73689	AXON BODY - TAP REFRESH 1 - DOCK MULTI BAY	1	1	06/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	630	1	12/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	1670	1	12/01/2027
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100399	AXON TASER 10 - CARTRIDGE - LIVE	620	1	12/01/2028
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100400	AXON TASER 10 - CARTRIDGE - HALT	1660	1	12/01/2028
AB4 FLEX POV TAP BUNDLE	100976	AXON BODY - TAP REFRESH 1 - AB4 FLEX POV	22	1	12/01/2029
Body Worn Camera Multi-Bay Dock TAP Bundle	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	5	1	12/01/2029
Body Worn Camera Single-Bay Dock TAP Bundle	73314	AXON BODY - TAP REFRESH 2 - DOCK SINGLE BAY	20	1	12/01/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	214	1	12/01/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	26	1	12/01/2029
BUNDLE - UNLIMITED PLUS	73310	AXON BODY - TAP REFRESH 2 - CAMERA	5	1	12/01/2029
BUNDLE - UNLIMITED PLUS	73688	AXON BODY - TAP REFRESH 2 - DOCK MULTI BAY	1	1	12/01/2029

**Software**

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
Basic License Bundle	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	34	01/01/2025	12/31/2029
Basic License Bundle	73840	AXON EVIDENCE - ECOM LICENSE - BASIC	34	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100801	AXON RECORDS - OSP LICENSE	208	01/01/2025	12/31/2029

**Software**

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101180	AXON TASER - DATA SCIENCE PROGRAM	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	2	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20248	AXON TASER - EVIDENCE.COM LICENSE	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73618	AXON COMMUNITY REQUEST	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73638	AXON STANDARDS - LICENSE	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73680	AXON RESPOND PLUS - LICENSE	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	2080	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73739	AXON PERFORMANCE - LICENSE	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	208	01/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	2	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	100801	AXON RECORDS - OSP LICENSE	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	20370	AXON VR - FULL ACCESS - TASER ADD-ON USER	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73478	AXON EVIDENCE - REDACTION ASSISTANT USER LICENSE	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73618	AXON COMMUNITY REQUEST	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73638	AXON STANDARDS - LICENSE	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73680	AXON RESPOND PLUS - LICENSE	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73682	AXON EVIDENCE - AUTO TAGGING LICENSE	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73683	AXON EVIDENCE - STORAGE - 10GB A LA CARTE	50	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73686	AXON EVIDENCE - STORAGE - UNLIMITED (AXON DEVICE)	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73739	AXON PERFORMANCE - LICENSE	5	01/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	73746	AXON EVIDENCE - ECOM LICENSE - PRO	5	01/01/2025	12/31/2029
Interview Room 2 Camera Standard	50037	AXON INTERVIEW - CLIENT SOFTWARE - PER TOUCH PANEL-PC	1	01/01/2025	12/31/2029
Interview Room 2 Camera Standard	50039	AXON INTERVIEW - CLIENT SOFTWARE - MAINT. PER TOUCH PANEL	1	01/01/2025	12/31/2029
Interview Room 2 Camera Standard	50041	AXON INTERVIEW - STREAMING SERVER LICENSE - PER SERVER	2	01/01/2025	12/31/2029
Interview Room 2 Camera Standard	50043	AXON INTERVIEW - STREAMING SERVER MAINTENANCE - PER SERVER	2	01/01/2025	12/31/2029
Interview Room 2 Camera Standard	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	2	01/01/2025	12/31/2029
Interview Room 2 Camera Standard	73840	AXON EVIDENCE - ECOM LICENSE - BASIC	1	01/01/2025	12/31/2029
A la Carte	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	01/01/2025	12/31/2029

**Services**

Bundle	Item	Description	QTY
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100751	AXON TASER 10 - REPLACEMENT ACCESS PROGRAM - DUTY CARTRIDGE	208
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	14
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101193	AXON TASER - ON DEMAND CERTIFICATION	1
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	208
BUNDLE - UNLIMITED PLUS	101184	AXON INVESTIGATE - TRAINING - OPERATOR AND EXAMINER	1
BUNDLE - UNLIMITED PLUS	11642	AXON INVESTIGATE - THIRD PARTY VIDEO SUPPORT	5
Interview Room 2 Camera Standard	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	1
A la Carte	101267	AXON VR - PSO - FULL INSTALLATION	1
A la Carte	85144	AXON BODY - PSO - STARTER	1
A la Carte	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1
A la Carte	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2

**Warranties**

Bundle	Item	Description	QTY	Estimated Start Date	Estimated End Date
AB4 FLEX POV TAP BUNDLE	100945	AXON BODY 4 - EXT WARRANTY - FLEX POV MODULE	22	12/01/2025	12/31/2029
Body Worn Camera Multi-Bay Dock TAP Bundle	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	5	12/01/2025	12/31/2029
Body Worn Camera Single-Bay Dock TAP Bundle	80466	AXON BODY - TAP WARRANTY - SINGLE BAY DOCK	20	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	9	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100213	AXON VR - EXT WARRANTY - TABLET	9	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	208	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	100704	AXON TASER 10 - EXT WARRANTY - HANDLE	6	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	9	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	9	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	208	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	6	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80374	AXON TASER - EXT WARRANTY - BATTERY PACK T7/T10	36	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80396	AXON TASER - EXT WARRANTY - DOCK SIX BAY T7/T10	3	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	208	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	6	12/01/2025	12/31/2029
BUNDLE - OFFICER SAFETY PLAN 10 PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	26	12/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	100197	AXON VR - EXT WARRANTY - HTC FOCUS 3 HEADSET	1	12/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	100213	AXON VR - EXT WARRANTY - TABLET	1	12/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	101007	AXON VR - EXT WARRANTY - CONTROLLER	1	12/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	101008	AXON VR - EXT WARRANTY - HANDGUN CONTROLLER	1	12/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	80464	AXON BODY - TAP WARRANTY - CAMERA	5	12/01/2025	12/31/2029
BUNDLE - UNLIMITED PLUS	80465	AXON BODY - TAP WARRANTY - MULTI BAY DOCK	1	12/01/2025	12/31/2029
Interview Room 2 Camera Standard	50448	AXON INTERVIEW - EXT WARRANTY	1	12/01/2025	12/31/2029



### Shipping Locations

Location Number	Street	City	State	Zip	Country
1	7 Descombes Dr	Broomfield	CO	80020-2495	USA
2	7 Descombes Dr	Broomfield	CO	80020-2495	USA

### Payment Details

Dec 2024						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 1	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 1	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	\$0.00	\$0.00	\$0.00
Year 1	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	\$0.00	\$0.00	\$0.00
Year 1	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 1	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 1	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	\$0.00	\$0.00	\$0.00
Year 1	50298	AXON INTERVIEW - CAMERA - OVERT DOME	2	\$0.00	\$0.00	\$0.00
Year 1	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2	\$0.00	\$0.00	\$0.00
Year 1	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 1	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 1	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	\$0.00	\$0.00	\$0.00
Year 1	B00022	BUNDLE - UNLIMITED PLUS	5	\$13,583.98	\$0.00	\$13,583.98
Year 1	BasicLicense	Basic License Bundle	34	\$6,630.00	\$0.00	\$6,630.00
Year 1	BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	\$0.00	\$0.00	\$0.00
Year 1	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	\$0.00	\$0.00	\$0.00
Year 1	H00001	AB4 Camera Bundle	213	\$0.00	\$0.00	\$0.00
Year 1	H00002	AB4 Multi Bay Dock Bundle	32	\$0.00	\$0.00	\$0.00
Year 1	H00003	AB4 1-Bay Dock Bundle	20	\$0.00	\$0.00	\$0.00
Year 1	H00004	AB4 FLEX POV HARDWARE BUNDLE	22	\$0.00	\$0.00	\$0.00
Year 1	IR2CA	Interview Room 2 Camera Standard	1	\$0.00	\$0.00	\$0.00
Year 1	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	\$680,409.62	\$0.00	\$680,409.62
Year 1	T00001	AB4 FLEX POV TAP BUNDLE	22	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$700,623.60</b>	<b>\$0.00</b>	<b>\$700,623.60</b>

Jan 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Invoice Upon Fulfillment	BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	\$0.00	\$0.00	\$0.00
Invoice Upon Fulfillment	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	\$0.00	\$0.00	\$0.00
Invoice Upon Fulfillment	IR2CA	Interview Room 2 Camera Standard	1	\$0.00	\$0.00	\$0.00
Invoice Upon Fulfillment	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	\$0.00	\$0.00	\$0.00
Invoice Upon Fulfillment	T00001	AB4 FLEX POV TAP BUNDLE	22	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

Dec 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 2	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	\$0.00	\$0.00	\$0.00

Dec 2025						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 2	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	\$0.00	\$0.00	\$0.00
Year 2	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 2	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 2	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	\$0.00	\$0.00	\$0.00
Year 2	50298	AXON INTERVIEW - CAMERA - OVERT DOME	2	\$0.00	\$0.00	\$0.00
Year 2	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2	\$0.00	\$0.00	\$0.00
Year 2	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 2	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 2	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	\$0.00	\$0.00	\$0.00
Year 2	B00022	BUNDLE - UNLIMITED PLUS	5	\$13,583.98	\$0.00	\$13,583.98
Year 2	BasicLicense	Basic License Bundle	34	\$6,630.00	\$0.00	\$6,630.00
Year 2	BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	\$0.00	\$0.00	\$0.00
Year 2	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	\$0.00	\$0.00	\$0.00
Year 2	H00001	AB4 Camera Bundle	213	\$0.00	\$0.00	\$0.00
Year 2	H00002	AB4 Multi Bay Dock Bundle	32	\$0.00	\$0.00	\$0.00
Year 2	H00003	AB4 1-Bay Dock Bundle	20	\$0.00	\$0.00	\$0.00
Year 2	H00004	AB4 FLEX POV HARDWARE BUNDLE	22	\$0.00	\$0.00	\$0.00
Year 2	IR2CA	Interview Room 2 Camera Standard	1	\$0.00	\$0.00	\$0.00
Year 2	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	\$680,409.62	\$0.00	\$680,409.62
Year 2	T00001	AB4 FLEX POV TAP BUNDLE	22	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$700,623.60</b>	<b>\$0.00</b>	<b>\$700,623.60</b>

Dec 2026						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 3	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 3	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	\$0.00	\$0.00	\$0.00
Year 3	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	\$0.00	\$0.00	\$0.00
Year 3	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 3	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 3	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	\$0.00	\$0.00	\$0.00
Year 3	50298	AXON INTERVIEW - CAMERA - OVERT DOME	2	\$0.00	\$0.00	\$0.00
Year 3	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2	\$0.00	\$0.00	\$0.00
Year 3	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 3	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 3	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	\$0.00	\$0.00	\$0.00
Year 3	B00022	BUNDLE - UNLIMITED PLUS	5	\$13,583.98	\$0.00	\$13,583.98
Year 3	BasicLicense	Basic License Bundle	34	\$6,630.00	\$0.00	\$6,630.00
Year 3	BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	\$0.00	\$0.00	\$0.00
Year 3	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	\$0.00	\$0.00	\$0.00
Year 3	H00001	AB4 Camera Bundle	213	\$0.00	\$0.00	\$0.00
Year 3	H00002	AB4 Multi Bay Dock Bundle	32	\$0.00	\$0.00	\$0.00
Year 3	H00003	AB4 1-Bay Dock Bundle	20	\$0.00	\$0.00	\$0.00
Year 3	H00004	AB4 FLEX POV HARDWARE BUNDLE	22	\$0.00	\$0.00	\$0.00
Year 3	IR2CA	Interview Room 2 Camera Standard	1	\$0.00	\$0.00	\$0.00
Year 3	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	\$680,409.62	\$0.00	\$680,409.62
Year 3	T00001	AB4 FLEX POV TAP BUNDLE	22	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$700,623.60</b>	<b>\$0.00</b>	<b>\$700,623.60</b>

Dec 2027						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00

<b>Dec 2027</b>						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 4	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	\$0.00	\$0.00	\$0.00
Year 4	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	\$0.00	\$0.00	\$0.00
Year 4	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 4	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 4	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	\$0.00	\$0.00	\$0.00
Year 4	50298	AXON INTERVIEW - CAMERA - OVERT DOME	2	\$0.00	\$0.00	\$0.00
Year 4	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2	\$0.00	\$0.00	\$0.00
Year 4	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 4	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 4	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	\$0.00	\$0.00	\$0.00
Year 4	B00022	BUNDLE - UNLIMITED PLUS	5	\$13,583.98	\$0.00	\$13,583.98
Year 4	BasicLicense	Basic License Bundle	34	\$6,630.00	\$0.00	\$6,630.00
Year 4	BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	\$0.00	\$0.00	\$0.00
Year 4	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	\$0.00	\$0.00	\$0.00
Year 4	H00001	AB4 Camera Bundle	213	\$0.00	\$0.00	\$0.00
Year 4	H00002	AB4 Multi Bay Dock Bundle	32	\$0.00	\$0.00	\$0.00
Year 4	H00003	AB4 1-Bay Dock Bundle	20	\$0.00	\$0.00	\$0.00
Year 4	H00004	AB4 FLEX POV HARDWARE BUNDLE	22	\$0.00	\$0.00	\$0.00
Year 4	IR2CA	Interview Room 2 Camera Standard	1	\$0.00	\$0.00	\$0.00
Year 4	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	\$680,409.62	\$0.00	\$680,409.62
Year 4	T00001	AB4 FLEX POV TAP BUNDLE	22	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$700,623.60</b>	<b>\$0.00</b>	<b>\$700,623.60</b>

<b>Dec 2028</b>						
Invoice Plan	Item	Description	Qty	Subtotal	Tax	Total
Year 5	101267	AXON VR - PSO - FULL INSTALLATION	1	\$0.00	\$0.00	\$0.00
Year 5	50045	AXON EVIDENCE - STORAGE - INTERVIEW ROOM UNLIMITED	4	\$0.00	\$0.00	\$0.00
Year 5	50114	AXON INTERVIEW - CAMERA - COVERT SENSOR	2	\$0.00	\$0.00	\$0.00
Year 5	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 5	50118	AXON INTERVIEW - MIC - WIRED (STANDARD MIC)	2	\$0.00	\$0.00	\$0.00
Year 5	50218	AXON INTERVIEW - CAMERA - COVERT MAIN UNIT	2	\$0.00	\$0.00	\$0.00
Year 5	50298	AXON INTERVIEW - CAMERA - OVERT DOME	2	\$0.00	\$0.00	\$0.00
Year 5	74116	AXON INTERVIEW - ENCLOSURE - FLUSH MOUNT	2	\$0.00	\$0.00	\$0.00
Year 5	85144	AXON BODY - PSO - STARTER	1	\$0.00	\$0.00	\$0.00
Year 5	85149	AXON TASER - 2 DAY PRODUCT SPECIFIC INSTRUCTOR COURSE	1	\$0.00	\$0.00	\$0.00
Year 5	85170	AXON INTERVIEW - INSTALLATION - STANDARD (PER ROOM)	2	\$0.00	\$0.00	\$0.00
Year 5	B00022	BUNDLE - UNLIMITED PLUS	5	\$13,583.98	\$0.00	\$13,583.98
Year 5	BasicLicense	Basic License Bundle	34	\$6,630.00	\$0.00	\$6,630.00
Year 5	BWCamMBDTAP	Body Worn Camera Multi-Bay Dock TAP Bundle	5	\$0.00	\$0.00	\$0.00
Year 5	BWCamSBDTAP	Body Worn Camera Single-Bay Dock TAP Bundle	20	\$0.00	\$0.00	\$0.00
Year 5	H00001	AB4 Camera Bundle	213	\$0.00	\$0.00	\$0.00
Year 5	H00002	AB4 Multi Bay Dock Bundle	32	\$0.00	\$0.00	\$0.00
Year 5	H00003	AB4 1-Bay Dock Bundle	20	\$0.00	\$0.00	\$0.00
Year 5	H00004	AB4 FLEX POV HARDWARE BUNDLE	22	\$0.00	\$0.00	\$0.00
Year 5	IR2CA	Interview Room 2 Camera Standard	1	\$0.00	\$0.00	\$0.00
Year 5	M00012	BUNDLE - OFFICER SAFETY PLAN 10 PLUS	208	\$680,409.62	\$0.00	\$680,409.62
Year 5	T00001	AB4 FLEX POV TAP BUNDLE	22	\$0.00	\$0.00	\$0.00
<b>Total</b>				<b>\$700,623.60</b>	<b>\$0.00</b>	<b>\$700,623.60</b>

***Sky-hero products are manufactured in European Union and are classified as military grade, transfer and re-export is strictly prohibited.***

**Tax is estimated based on rates applicable at date of quote and subject to change at time of invoicing. If a tax exemption certificate should be applied, please submit prior to invoicing.**

## Standard Terms and Conditions

### Axon Enterprise Inc. Sales Terms and Conditions

#### Axon Master Services and Purchasing Agreement:

This Quote is limited to and conditional upon your acceptance of the provisions set forth herein and Axon's Master Services and Purchasing Agreement (posted at <https://www.axon.com/sales-terms-and-conditions>), as well as the attached Statement of Work (SOW) for Axon Fleet and/or Axon Interview Room purchase, if applicable. In the event you and Axon have entered into a prior agreement to govern all future purchases, that agreement shall govern to the extent it includes the products and services being purchased and does not conflict with the Axon Customer Experience Improvement Program Appendix as described below.

#### ACEIP:

The Axon Customer Experience Improvement Program Appendix, which includes the sharing of de-identified segments of Agency Content with Axon to develop new products and improve your product experience (posted at [www.axon.com/legal/sales-terms-and-conditions](http://www.axon.com/legal/sales-terms-and-conditions)), is incorporated herein by reference. By signing below, you agree to the terms of the Axon Customer Experience Improvement Program.

#### Acceptance of Terms:

Any purchase order issued in response to this Quote is subject solely to the above referenced terms and conditions. By signing below, you represent that you are lawfully able to enter into contracts. If you are signing on behalf of an entity (including but not limited to the company, municipality, or government agency for whom you work), you represent to Axon that you have legal authority to bind that entity. If you do not have this authority, please do not sign this Quote.

## Exceptions to Standard Terms and Conditions

This quote is a renewal of contract #00062913. \$0 BWC HW contained in this quote is a TAP refresh of that contract. All TAP obligations of the contracts listed above will be considered fulfilled upon execution of this quote.

---

Signature

---

Date Signed

10/3/2024



## EXHIBIT C

### INSURANCE REQUIREMENTS

#### CITY and COUNTY of BROOMFIELD INSURANCE REQUIREMENTS - Including 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 Protected Information		
	COVERAGES AND LIMITS OF INSURANCE	Required
1.	<p><b>Commercial General Liability</b></p> <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>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.</p>	<p>Minimum Limits:</p> <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.	<p><b>Automobile Liability</b></p> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<p>Minimum Limit:</p> <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.	<p><b>Workers' Compensation</b></p> <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>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.</p>	<p>Employer's Liability with Minimum Limits:</p> <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.	<p><b>Protected Information (Cyber) Liability</b></p> <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>	<p>Minimum Limit:</p> <ul style="list-style-type: none"> <li>\$1,000,000 per Claim</li> <li>\$2,000,000 General Aggregate</li> </ul>
5.	<p><b>Professional Liability</b></p> <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>	<p>Minimum Limit:</p> <ul style="list-style-type: none"> <li>\$1,000,000 Per Claim /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, 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.</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).



# CERTIFICATE OF LIABILITY INSURANCE

DATE(MM/DD/YYYY)  
08/08/2024

<p><b>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</b></p>	
<p><b>IMPORTANT; If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</b></p>	
<p><b>PRODUCER</b> Aon Risk Insurance services West, Inc. Phoenix AZ office 4300 East camelback Rd. suite 460 Phoenix AZ 85018 USA</p>	<p><b>CONTACT NAME:</b> (V.C. No. Ext) 8662837122 j.r.e.(No.) (800) 363-0105</p> <p><b>E-MAIL ADDRESS</b></p>
<p><b>INSURED</b> Axon Enterprise, Inc. 17800 N, 85th Street Scottsdale AZ 85255 USA</p>	<p><b>INSURER A:</b> Hartford Fire Insurance co. 19682</p>
	<p><b>INSURER B:</b> Nutmeg Insurance Co 39608</p>
	<p><b>INSURER C:</b> National casualty company 11991</p>
	<p><b>INSURER D:</b></p>
	<p><b>INSURER E:</b></p>
	<p><b>INSURER F:</b></p>

Holder Identifier

COVERAGES

CERTIFICATE NUMBER: 570107535250

REVISION NUMBER:

<p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS. Limits shown are as requested</p>								
<p>CLAIMS-MADE OCCUR</p>		<p>SIR Applies per policy terms &amp; conditions</p>			<p>PREMISES - Occurrence</p>			<p>\$1,000,000</p>
<p>GENL AGGREGATE LIMIT A P P L T S P E A</p>					<p>GENERAL AGGREGATE</p>			<p>\$2,000,000</p>
<p>POLICY EXCEPT LOC</p>					<p>PRODUCTS - COMP/OP AGG</p>			<p>Excluded</p>
<p>OTHER: Xcl Prod/Comp ops</p>					<p>Per Occ SIR</p>			<p>\$1,000,000</p>
<p>A AUTOMOBILE LIABILITY</p>		<p>59UEENFN6050</p>			<p>COMBINED SINGLE LIMIT</p>			<p>\$1,000,000</p>
<p>X ANY AUTO OWNED - SCHEDULED</p>					<p>BODILY INJURY (Per person)</p>			
<p>AUTOS ONLY - AUTOS</p>					<p>BODILY INJURY (Per accident)</p>			
<p>HIRED AUTOS NON-OWNED</p>					<p>PROPERTY DAMAGE</p>			
<p>(Per accident)</p>								
<p>X UMBRELLA LIAB OCCUR</p>		<p>UN000U2j5</p>			<p>EACH OCCURRENCE</p>			<p>\$9,000,000</p>
<p>EXCESS LIAB CLAIMS-MADE</p>					<p>AGGREGATE</p>			<p>\$9,000,000</p>
<p>OEDL x RETENTION \$10,000</p>								
<p>B WORKERS COMPENSATION AND EMPLOYERS' LIABILITY</p>		<p>59WEACUS0D</p>			<p>PEA STATUTE</p>			<p>OTH-</p>
<p>ANY PROPRIETOR / PARTNER / EXECUTIVE OFFICER / MEMBER EXCLUDED? (Mandatory In NH)</p>		<p>N/A</p>			<p>E.L. EACH ACCIDENT</p>			<p>\$1,000,000</p>
<p>g i Sfp1f&amp; ntr OPERATIONS below</p>					<p>E.L. DISEASE-EA EMPLOYEE</p>			<p>\$1,000,000</p>
					<p>E.L. DISEASE-POLICY LIMIT</p>			<p>\$1,000,000</p>

DESCRIPTION OF OPERATIONS | LOCATIONS | VEHICLES (ACORD 101 Additional Remarks Schedule, may be attached if more space is required)

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 are included as Additional Insured in accordance with the policy provisions of the General Liability policy. A Waiver of subrogation is granted in favor of certificate Holder in accordance with the policy provisions of the General Liability policy.



<p>City and County of Broomfield one Descombes Drive Broomfield co 80220 USA</p>	<p>SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.</p> <hr/> <p>AUTHORIZED REPRESENTATIVE</p>
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ACORD 25 (2016/03)

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AGENCY Aon Risk Insurance services West, Inc.		NAMED INSURED Axon Enterprise, Inc.	
POLICY NUMBER see certificate Number: 570107535250			
CARRIER See certificate Number: 570107535250	NAICCODE	EFFECTIVE DATE	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance  
workers compensation coverage

- Hartford Fire Insurance company
    - AL, OK, UT, VT
  - Nutmeg Insurance company
    - AZ, IL, MI
  - Twin city Fire Insurance company
    - AR, CT, DE, FL, ID, IN, IA, KS, KY, LA, ME, MA, MN, MS, MI, NE, NH, NM, ND, OH, RI, SC, SD, TN, TX, WA, WV, WI, WY
  - Sentinel Insurance company Ltd.
    - CA, GA, MD, NY, OR, PA, VA,
  - Hartford Insurance company of the southeast
    - CO
  
  - Property and casualty Insurance company of Hartford
    - DC
  - Hartford Underwriters Insurance company
    - HI, NJ, MO
  - Hartford Accident and Indemnity Company
- NC, NV

AGENCY CUSTOMER ID: 570000007117  
LOC#:

### ADDITIONAL REMARKS SCHEDULE

Page\_ of\_

AGENCY Aon Risk Insurance services West, Inc.		NAMED INSURED Axon Enterorise, Inc.	
POLICY NUMBER see certificate Number: 570107535250			
CARRIER see certificate Number: 570107535250	NAIC CODE	EFFECTIVE DATE	

**ADDITIONAL REMARKS**

**THIS ADDITIONAL REMARKS FORM IS A SCHEDULE TO ACORD FORM,**

**FORM NUMBER:** ACORD 25 **FORM TITLE:** Certificate of Liability Insurance

Products Liability schedule

Products/Completed Operations coverage  
8/1/2024 - 8/1/2025:

Policy #034064091  
 Lexington Insurance company  
 claims Made Coverage Form - Products Liability  
 \$10,000,000 Each occurrence Limit  
 \$10,000,000 Products/Completed operations Aggre ate Limit  
 \$ 5,000,000 Per occurrence self Insured Retention

Policy #034064092  
 Lexington Insurance company  
 Occurrence coverage Form - Products Liability  
 \$10,000,000 Each occurrence Limit  
 \$10,000,000 Products/completed operations Aggre ate Limit  
 \$ 5,000,000 Per occurrence self Insured Retention

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**C. Proposed Resolutions for Sunridge Lift Station Construction Agreement**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6C.
Presented By	
Katie Allen	
Community Goals	

## Overview

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution No. 2024-152 would approve Amendment Two to the Construction Manager/General Contractor (CM/GC) for the lift station site application and rehabilitation projects with Moltz Construction, Inc. Amendment 2 will add the necessary improvements for the Sunridge Lift Station to the scope of work.

Proposed Resolution No. 2024-153 would approve a design services agreement with Burns & McDonnell Engineering Co., Inc. (B&M) for construction administration services and coordination with the state agencies for the Sunridge Lift Station site application and rehabilitation project.

### **Attachments**

[Memo for Site App\\_Sunridge Lift Station.pdf](#)

[Resolution No. 2024-152 \(Moltz Sunridge\).pdf](#)

[Resolution No. 2024-153 \(B&M CA Sunridge\).pdf](#)

[Updated AIA 133, A201 and GMP Package - Signed Sunridge Lift Station.pdf](#)

[Consulting Agreement Burns McDonnell\\_Sunridge Construction\\_From Broomfield for BMcD Signature.pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution No. 2024-152 would approve the Construction Manager/General Contractor contract (CM/GC) for the Sunridge Lift Station site application and rehabilitation projects with Moltz Construction, Inc.

Proposed Resolution No. 2024-153 would approve a consulting agreement with Burns & McDonnell Engineering Co., Inc. (B&M) for construction administration services and coordination with the state agencies for the Sunridge Lift Station site application and rehabilitation project.

The Colorado Department of Public Health and Environment (CDPHE) is the governing state agency for sewer lift stations within the state of Colorado. Municipalities are required to receive approval from CDPHE to build and operate lift stations by submitting site applications for each station.

Of the 13 existing lift stations Broomfield operates, there are four lift stations in which staff and CDPHE were unable to locate any existing/historic records or information on the site applications. These four stations were designed and constructed in the 1980s. Since the written records for the site applications cannot be located, CDPHE has notified Broomfield of their noncompliance and is requiring Broomfield to bring these four lift stations into compliance with current regulations. Other municipalities that constructed sewer lift stations during the same timeframe are in similar circumstances and are being required to comply with CDPHE regulations.

The 2021, 2022, 2023, 2024, and 2025 Budgets have provided funding for the Site Application process and complete rehabilitation work. Broomfield is working with B&M and Moltz Construction to sequentially design and construct the necessary improvements to the four lift stations in priority order. The four lift stations include the Interlocken Lift Station, Lac Amora Lift Station, Sunridge Lift Station, and Outlook Lift Station. Improvements to the Interlocken Lift Station and the Lac Amora Lift Station are complete.

The Sunridge Lift Station is located northeast of the intersection of Miramonte Blvd and Alter Street at the east entrance to the Sunridge Condominiums. The station was constructed in 1984 with the development of the Sunridge condominiums and homes. B&M completed the design for the Sunridge Lift Station improvements and Broomfield has recently received approval from CDPHE for the Sunridge project. Construction easements have been requested from the Sunridge Condo Association and staff is waiting on a response.

Proposed Resolution No. 2024-152 would approve the construction agreement with Moltz Construction for the Sunridge Lift Station and construction in an amount not to exceed \$3,348,107. The pricing has been reviewed and is consistent with current pricing and the major scope items have been competitively bid.

The scope of work associated with the Sunridge lift station includes:

- Demolition of the existing building;
- Construction of a new building to meet existing building codes and CDPHE regulations;
- Replacement of the instrument and system controls equipment, interior piping, and electrical system;
- Installation of HVAC system;
- Construction of a new storage vault to meet the increased storage capacity;

- Installation site security;
- Replacement of the pumping system; and
- Restoration of the site including landscaping, tree replacement, and site access.

Proposed Resolution No. 2024-153 would approve a consulting agreement for administrative services with Burns & McDonnell Engineering Co., Inc. in an amount not to exceed \$341,841. The proposed hours are consistent with the complexity of the project and the hourly rates are consistent and comparable to engineering design firms with similar expertise.

If approved, Moltz will begin the permitting and submittal process with the design team for equipment and materials for the project. On-site work is anticipated to begin in early 2025 depending on equipment and material availability and deliveries.

The team will provide notification of the project to the Sunridge Condominiums and surrounding residents with mailings prior to the start of construction.

Provided that Moltz continues to perform well and maintains the 2021 negotiated fee, staff anticipates recommending an additional CM/GC agreement to complete the rehabilitation of the final lift station, Outlook which is anticipated in 2026 depending on State permitting and funding.

## 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
2023 Sewer Lift Station Compliance Budget 21Q0038 (45-70621-55200, 21Q0038)	\$4,946,146
2024 Sewer Lift Station Compliance Budget 21Q0038 (45-70621-55200, 21Q0038)	\$7,292,795
	<b>\$13,971,396</b>
Interlocken, Lac Amora and Sunridge Lift Stations (Design, Permitting, Construction for Interlocken and Lac Amora and contingency)	-\$8,038,752
Construction Agreement with Moltz Construction for the Sunridge Lift Station	-\$3,348,107
10% Construction Contingency (Moltz)	-\$334,810
Consulting Agreement with Burns & McDonnell for the Sunridge Lift Station	-\$341,184
10% Consulting Agreement Contingency (Burns & McDonnell)	-\$34,118
Testing, Environmental Clearance (20-day letters), and Permitting fees (estimate)	-\$15,000
<b>Projected Balance</b>	<b>\$1,859,425</b>

## Prior Council or Other Entity Actions

Council authorized Resolution [2021-27](#) for a Consulting Agreement with Burns & McDonnell, Inc., for the Interlocken Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2021-133](#) for Amendment One to Consulting Agreement with Burns & McDonnell for the Interlocken Lift Station Site Application and Rehabilitation Project

Council authorized Resolution [2021-141](#) for a Construction Agreement with Vortex, Inc. for the Interlocken Lift Station Utilities Project.

Council authorized Amendment One Resolution [2021-163](#) for a Construction Agreement with Moltz Construction, Inc. for the Interlocken Lift Station Rehabilitation Project.

Council authorized Resolution [2021-193](#) for Amendment Two to the Consulting Agreement with Burns & McDonnell for the Lac Amora Lift Station Site Application and Rehabilitation Project.

Council authorized Resolution [2023-32](#) for an Amendment to the Construction Agreement with Moltz Construction, Inc. for the Lac Amora Lift Station Rehabilitation Project.

Council authorized Resolution [2023-58](#) for the Third Amendment to the Consulting Agreement with Burns & McDonnell for the Lac Amora Lift Station Rehabilitation Project.

Council authorized Resolution [2024-10](#) for the Consulting Agreement with Burns & McDonnell for design services for the Sunridge Lift Station Site Application and Rehabilitation Project

Council previously authorized additional funds in the [2024 Revised Budget](#) for Lift Station Site Application and Rehabilitation 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 2024-152 be adopted and,  
That Resolution 2024-153 be adopted.**

## Alternatives

Decide not to continue with the Sunridge Lift Station Site Application and Rehabilitation Project.

# RESOLUTION NO. 2024-152

A resolution approving the Construction Manager/General Contractor Agreement by and between Broomfield and Moltz Construction, Inc., for the Sunridge Lift Station Site Application and Rehabilitation Project

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

## Section 1.

The Construction Manager/General Contractor Agreement (AIA A133) by and between the City and County of Broomfield and Moltz Construction, Inc., in the amount of \$3,348,107 for construction services for the Sunridge Lift Station Site Application and Rehabilitation Project 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 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 November 12, 2024

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to form:

KKH

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



# RESOLUTION NO. 2024-153

A resolution authorizing and approving a Consulting Agreement between Broomfield and Burns & McDonnell Engineering Co., Inc for the Sunridge Lift Station Site Application and Rehabilitation Project

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

## Section 1.

The Consulting Agreement by and between the City and County of Broomfield and Burns & McDonnell Engineering Co., Inc., in the amount of \$341,184 for consulting services for the Sunridge Lift Station Site Application and Rehabilitation Project, is approved.

## Section 2.

The Mayor or Mayor Pro Term 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 November 12, 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

# AIA<sup>®</sup> Document A133<sup>®</sup> – 2019

## **Standard Form of Agreement Between Owner and Construction Manager as Constructor** where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

AGREEMENT made as of the    day of    in the year  
*(In words, indicate day, month, and year.)*

BETWEEN the Owner:  
*(Name, legal status, address, and other information)*

City and County of Broomfield, Colorado municipal corporation and county  
One DesCombes Drive Broomfield Colorado 80020

and the Construction Manager:  
*(Name, legal status, address, and other information)*

Moltz Construction, Inc.  
Po Box 729 (8807 CR 175) Salida, CO 81201

for the following Project:  
*(Name, location, and detailed description)*

Sunridge Lift Station  
2019 Sunridge Circle Broomfield CO 80020

The Architect/Engineer (Architect and Engineer are synonymous for this contract):  
*(Name, legal status, address, and other information)*

Burns & McDonnell  
Andrew Toth Project Manager

The Owner and Construction Manager agree as follows.

**ADDITIONS AND DELETIONS:**  
The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

AIA Document A201™–2017, General Conditions of the Contract for Construction, is adopted in this document by reference. Do not use with other general conditions unless this document is modified.

## TABLE OF ARTICLES

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- 2 GENERAL PROVISIONS
- 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES
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### EXHIBIT A GUARANTEED MAXIMUM PRICE AMENDMENT

### EXHIBIT B INSURANCE AND BONDS

#### ARTICLE 1 INITIAL INFORMATION

§ 1.1 This Agreement is based on the Initial Information set forth in this Section 1.1.

*(For each item in this section, insert the information or a statement such as "not applicable" or "unknown at time of execution.")*

§ 1.1.1 The Owner's program for the Project, as described in Section 4.1.1:

*(Insert the Owner's program, identify documentation that establishes the Owner's program, or state the manner in which the program will be developed.)*

Sunridge GMP Package dated August 22, 2024, Sunridge Lift Station 432313 Self Priming Pumps, Division 26 Electrical Specifications, Division 40 Instrumentation, Current Edition Broomfield 2022 Standards and Specifications

§ 1.1.2 The Project's physical characteristics:

*(Identify or describe pertinent information about the Project's physical characteristics, such as size; location; dimensions; geotechnical reports; site boundaries; topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site, etc.)*

Construct the Sunridge Lift Station, Overflow Vault, and Sitework.

§ 1.1.3 The Owner's budget for the Guaranteed Maximum Price, as defined in Article 6:

Init.

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User Notes:

(3B9ADA46)

*(Provide total and, if known, a line item breakdown.)*

Three Million Three Hundred Forty-Eight Thousand One Hundred Seven Dollars and Zero Cents (\$3,348,107.00).

**§ 1.1.4** The Owner's anticipated design and construction milestone dates:

.1 Design phase milestone dates, if any:

None.

.2 Construction commencement date:

To be determined by a Notice to Proceed for Construction.

.3 Substantial Completion date or dates:

Three Hundred Sixty-Five (365) days from the date of commencement of construction.

.4 Other milestone dates:

None.

**§ 1.1.5** The Owner's requirements for accelerated or fast-track scheduling, or phased construction, are set forth below:

*(Identify any requirements for fast-track scheduling or phased construction.)*

None

**§ 1.1.6** Section not used.

*(Paragraphs Deleted)*

**§ 1.1.7** Other Project information:

*(Identify special characteristics or needs of the Project not provided elsewhere.)*

None

**§ 1.1.8** The Owner identifies the following representative in accordance with Section 4.2:

*(List name, address, and other contact information.)*

Ronda Jo Ackerman Alford  
One DesCombes Drive  
Broomfield Colorado 80020  
303-464-5807

**§ 1.1.9** The persons or entities, in addition to the Owner's representative, who are required to review the Construction Manager's submittals to the Owner are as follows:

*(List name, address and other contact information.)*

None

**§ 1.1.10** The Owner shall retain the following consultants and contractors:

*(List name, legal status, address, and other contact information.)*

.1 Geotechnical Engineer:

Init.

Ground Engineering

.2 Civil Engineer:

Burns & McDonnell

.3 Other, if any:

*(List any other consultants retained by the Owner, such as a Project or Program Manager.)*

§ 1.1.11 The Architect's representative:

*(List name, address, and other contact information.)*

Burns & McDonnell  
Andrew Toth, Project Manager

§ 1.1.12 The Construction Manager identifies the following representative in accordance with Article 3:

*(List name, address, and other contact information.)*

Jon Tucker  
Moltz Construction, Inc.  
PO Box 729  
Salida CO 81201

§ 1.1.13 The Owner's requirements for the Construction Manager's staffing plan for Preconstruction Services, as required under Section 3.1.9:

*(List any Owner-specific requirements to be included in the staffing plan.)*

Preconstruction Services to be performed per Sunridge .

§ 1.1.14 The Owner's requirements for subcontractor procurement for the performance of the Work:

*(List any Owner-specific requirements for subcontractor procurement.)*

None

§ 1.1.15 Other Initial Information on which this Agreement is based:

None

§ 1.2 The Owner and Construction Manager may rely on the Initial Information. Both parties, however, recognize that such information may materially change and, in that event, the Owner and the Construction Manager shall work

together to reach agreement to adjust the Project schedule, the Construction Manager's services, and the Construction Manager's compensation. The Owner shall adjust the Owner's budget for the Guaranteed Maximum Price and the Owner's anticipated design and construction milestones, as necessary, to accommodate material changes in the Initial Information, as mutually agreed.

§ 1.3 Neither the Owner's nor the Construction Manager's representative shall be changed without ten days' prior notice to the other party.

## **ARTICLE 2 GENERAL PROVISIONS**

### **§ 2.1 The Contract Documents**

The Contract Documents consist of this Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of this Agreement, other documents listed in this Agreement, and Modifications issued after execution of this Agreement, all of which form the Contract and are as fully a part of the Contract as if attached to this Agreement or repeated herein. Upon the Owner's acceptance of the Construction Manager's Guaranteed Maximum Price proposal, the Contract Documents will also include the documents described in Section 3.2.3 and identified in the Guaranteed Maximum Price Amendment and revisions prepared by the Architect and furnished by the Owner as described in Section 3.2.8. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations or agreements, either written or oral. If anything in the other Contract Documents, other than a Modification, is inconsistent with this Agreement, this Agreement shall govern. An enumeration of the Contract Documents, other than a Modification, appears in Article 15.

### **§ 2.2 Relationship of the Parties**

The Construction Manager accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to cooperate with the Architect and exercise the Construction Manager's skill and judgment in furthering the interests of the Owner to furnish efficient construction administration, management services, and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests. The Owner agrees to furnish or approve, in a timely manner, information required by the Construction Manager and to make payments to the Construction Manager in accordance with the requirements of the Contract Documents.

### **§ 2.3 General Conditions**

§ 2.3.1 For the Preconstruction Phase, AIA Document A201™–2017, General Conditions of the Contract for Construction, shall apply as follows: Section 1.5, Ownership and Use of Documents; Section 1.7, Digital Data Use and Transmission; Section 1.8, Building Information Model Use and Reliance; Section 2.2.4, Confidential Information; Section 3.12.10, Professional Services; Section 10.3, Hazardous Materials; Section 13.1, Governing Law. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

§ 2.3.2 For the Construction Phase, the general conditions of the contract shall be as set forth in A201–2017, which document is incorporated herein by reference. The term "Contractor" as used in A201–2017 shall mean the Construction Manager.

## **ARTICLE 3 CONSTRUCTION MANAGER'S RESPONSIBILITIES**

The Construction Manager's Preconstruction Phase responsibilities are set forth in Sections 3.1 and 3.2, and in the applicable provisions of A201-2017 referenced in Section 2.3.1. The Construction Manager's Construction Phase responsibilities are set forth in Section 3.3. The Owner and Construction Manager may agree, in consultation with the Architect, for the Construction Phase to commence prior to completion of the Preconstruction Phase, in which case, both phases will proceed concurrently. The Construction Manager shall identify a representative authorized to act on behalf of the Construction Manager with respect to the Project.

### **§ 3.1 Preconstruction Phase**

#### **§ 3.1.1 Extent of Responsibility**

The Construction Manager shall exercise reasonable care in performing its Preconstruction Services. The Owner and Architect shall be entitled to rely on, and shall not be responsible for, the accuracy, completeness, and timeliness of services and information furnished by the Construction Manager. The Construction Manager, however, does not warrant or guarantee estimates and schedules except as may be included as part of the Guaranteed Maximum Price. The Construction Manager is not required to ascertain that the Drawings and Specifications are in accordance with

applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Construction Manager shall promptly report to the Architect and Owner any nonconformity discovered by or made known to the Construction Manager as a request for information in such form as the Architect may require.

**§ 3.1.2** The Construction Manager shall provide a preliminary evaluation of the Owner's program, schedule and construction budget requirements, each in terms of the other.

### **§ 3.1.3 Consultation**

**§ 3.1.3.1** The Construction Manager shall schedule and conduct meetings with the Architect and Owner to discuss such matters as procedures, progress, coordination, and scheduling of the Work.

**§ 3.1.3.2** The Construction Manager shall advise the Owner and Architect on proposed site use and improvements, selection of materials, building systems, and equipment. The Construction Manager shall also provide recommendations to the Owner and Architect, consistent with the Project requirements, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; prefabrication; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions. The Construction Manager shall consult with the Architect regarding professional services to be provided by the Construction Manager during the Construction Phase.

*(Paragraph Deleted)*

### **§ 3.1.4 Project Schedule**

When Project requirements in Section 4.1.1 have been sufficiently identified, the Construction Manager shall prepare and periodically update a Project schedule for the Architect's review and the Owner's acceptance. The Construction Manager shall obtain the Architect's approval for the portion of the Project schedule relating to the performance of the Architect's services. The Project schedule shall coordinate and integrate the Construction Manager's services, the Architect's services, other Owner consultants' services, and the Owner's responsibilities; and identify items that affect the Project's timely completion. The updated Project schedule shall include the following: submission of the Guaranteed Maximum Price proposal; components of the Work; times of commencement and completion required of each Subcontractor; ordering and delivery of products, including those that must be ordered in advance of construction; and the occupancy requirements of the Owner.

### **§ 3.1.5 Phased Construction**

The Construction Manager, in consultation with the Architect, shall provide recommendations with regard to accelerated or fast-track scheduling, procurement, and sequencing for phased construction. The Construction Manager shall take into consideration cost reductions, cost information, constructability, provisions for temporary facilities, and procurement and construction scheduling issues.

### **§ 3.1.6 Cost Estimates**

**§ 3.1.6.1** Based on the preliminary design and other design criteria prepared by the Architect, the Construction Manager shall prepare, for the Architect's review and the Owner's approval, preliminary estimates of the Cost of the Work or the cost of program requirements using area, volume, or similar conceptual estimating techniques. If the Architect or Construction Manager suggests alternative materials and systems, the Construction Manager shall provide cost evaluations of those alternative materials and systems.

**§ 3.1.6.2** As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall prepare and update, at appropriate intervals agreed to by the Owner, Construction Manager and Architect, an estimate of the Cost of the Work with increasing detail and refinement. The Construction Manager shall include in the estimate those costs to allow for the further development of the design, price escalation, and market conditions, until such time as the Owner and Construction Manager agree on a Guaranteed Maximum Price for the Work. The estimate shall be provided for the Architect's review and the Owner's approval. The Construction Manager shall inform the Owner and Architect in the event that the estimate of the Cost of the Work exceeds the latest approved Project budget, and make recommendations for corrective action.

§ 3.1.6.3 If the Architect is providing cost estimating services as a Supplemental Service, and a discrepancy exists between the Construction Manager's cost estimates and the Architect's cost estimates, the Construction Manager and the Architect shall work together to reconcile the cost estimates.

§ 3.1.7 As the Architect progresses with the preparation of the Schematic Design, Design Development and Construction Documents, the Construction Manager shall consult with the Owner and Architect and make recommendations regarding constructability and schedules, for the Architect's review and the Owner's approval.

§ 3.1.8 The Construction Manager shall provide recommendations and information to the Owner and Architect regarding equipment, materials, services, and temporary Project facilities.

§ 3.1.9 The Construction Manager shall provide a staffing plan for Preconstruction Phase services for the Owner's review and approval.

§ 3.1.10 If the Owner identified a Sustainable Objective in Article 1, the Construction Manager shall fulfill its Preconstruction Phase responsibilities as required in AIA Document E234™-2019, Sustainable Projects Exhibit, Construction Manager as Constructor Edition, attached to this Agreement.

#### § 3.1.11 Subcontractors and Suppliers

§ 3.1.11.1 If the Owner has provided requirements for subcontractor procurement in section 1.1.14, the Construction Manager shall provide a subcontracting plan, addressing the Owner's requirements, for the Owner's review and approval.

§ 3.1.11.2 The Construction Manager shall develop bidders' interest in the Project.

§ 3.1.11.3 The processes described in Article 9 shall apply if bid packages will be issued during the Preconstruction Phase.

#### § 3.1.12 Procurement

The Construction Manager shall prepare, for the Architect's review and the Owner's acceptance, a procurement schedule for items that must be ordered in advance of construction. The Construction Manager shall expedite and coordinate the ordering and delivery of materials that must be ordered in advance of construction. If the Owner agrees to procure any items prior to the establishment of the Guaranteed Maximum Price, the Owner shall procure the items on terms and conditions acceptable to the Construction Manager. Upon the establishment of the Guaranteed Maximum Price, the Owner shall assign all contracts for these items to the Construction Manager and the Construction Manager shall thereafter accept responsibility for them.

#### § 3.1.13 Compliance with Laws

The Construction Manager shall comply with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to its performance under this Contract, and with equal employment opportunity programs, and other programs as may be required by governmental and quasi-governmental authorities.

#### § 3.1.14 Other Preconstruction Services

Insert a description of any other Preconstruction Phase services to be provided by the Construction Manager, or reference an exhibit attached to this document

*(Describe any other Preconstruction Phase services, such as providing cash flow projections, development of a project information management system, early selection or procurement of subcontractors, etc.)*

None.

#### § 3.2 Guaranteed Maximum Price Proposal

§ 3.2.1 At a time to be mutually agreed upon by the Owner and the Construction Manager, the Construction Manager shall prepare a Guaranteed Maximum Price proposal for the Owner's and Architect's review, and the Owner's acceptance. The Guaranteed Maximum Price in the proposal shall be the sum of the Construction Manager's estimate of the Cost of the Work, the Construction Manager's contingency described in Section 3.2.4, and the Construction Manager's Fee described in Section 6.1.2.



**§ 3.2.2** To the extent that the Contract Documents are anticipated to require further development, the Guaranteed Maximum Price includes the costs attributable to such further development consistent with the Contract Documents and reasonably inferable therefrom. Such further development does not include changes in scope, systems, kinds and quality of materials, finishes, or equipment, all of which, if required, shall be incorporated by Change Order.

**§ 3.2.3** The Construction Manager shall include with the Guaranteed Maximum Price proposal a written statement of its basis, which shall include the following:

- .1 A list of the Drawings and Specifications, including all Addenda thereto, and the Conditions of the Contract;
- .2 A list of the clarifications and assumptions made by the Construction Manager in the preparation of the Guaranteed Maximum Price proposal, including assumptions under Section 3.2.2;
- .3 A statement of the proposed Guaranteed Maximum Price, including a statement of the estimated Cost of the Work organized by trade categories or systems, including allowances; the Construction Manager's contingency set forth in Section 3.2.4; and the Construction Manager's Fee;
- .4 The anticipated date of Substantial Completion upon which the proposed Guaranteed Maximum Price is based; and
- .5 A date by which the Owner must accept the Guaranteed Maximum Price.

**§ 3.2.4** In preparing the Construction Manager's Guaranteed Maximum Price proposal, the Construction Manager shall include a contingency for the Construction Manager's exclusive use to cover those costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order.

**§ 3.2.5** The Construction Manager shall meet with the Owner and Architect to review the Guaranteed Maximum Price proposal. In the event that the Owner or Architect discover any inconsistencies or inaccuracies in the information presented, they shall promptly notify the Construction Manager, who shall make appropriate adjustments to the Guaranteed Maximum Price proposal, its basis, or both.

**§ 3.2.6** If the Owner notifies the Construction Manager that the Owner has accepted the Guaranteed Maximum Price proposal in writing before the date specified in the Guaranteed Maximum Price proposal, the Guaranteed Maximum Price proposal shall be deemed effective without further acceptance from the Construction Manager. Following acceptance of a Guaranteed Maximum Price, the Owner and Construction Manager shall execute the Guaranteed Maximum Price Amendment amending this Agreement, a copy of which the Owner shall provide to the Architect. The Guaranteed Maximum Price Amendment shall set forth the agreed upon Guaranteed Maximum Price with the information and assumptions upon which it is based.

**§ 3.2.7** The Construction Manager shall not incur any cost to be reimbursed as part of the Cost of the Work prior to the execution of the Guaranteed Maximum Price Amendment, unless the Owner provides prior written authorization for such costs.

**§ 3.2.8** The Owner shall authorize preparation of revisions to the Contract Documents that incorporate the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment. The Owner shall promptly furnish such revised Contract Documents to the Construction Manager. The Construction Manager shall notify the Owner and Architect of any inconsistencies between the agreed-upon assumptions and clarifications contained in the Guaranteed Maximum Price Amendment and the revised Contract Documents.

**§ 3.2.9** The Construction Manager shall include in the Guaranteed Maximum Price all sales, consumer, use and similar taxes for the Work provided by the Construction Manager that are legally enacted, whether or not yet effective, at the time the Guaranteed Maximum Price Amendment is executed.

### **§ 3.3 Construction Phase**

#### **§ 3.3.1 General**

**§ 3.3.1.1** For purposes of Section 8.1.2 of A201–2017, the date of commencement of the Work shall mean the date of commencement of the Construction Phase.

**§ 3.3.1.2** The Construction Phase shall commence upon the Owner's execution of the Guaranteed Maximum Price Amendment or, prior to acceptance of the Guaranteed Maximum Price proposal, by written agreement of the parties.

The written agreement shall set forth a description of the Work to be performed by the Construction Manager, and any insurance and bond requirements for Work performed prior to execution of the Guaranteed Maximum Price Amendment.

### **§ 3.3.2 Administration**

**§ 3.3.2.1** The Construction Manager shall schedule and conduct meetings to discuss such matters as procedures, progress, coordination, scheduling, and status of the Work. The Construction Manager shall prepare and promptly distribute minutes of the meetings to the Owner and Architect.

**§ 3.3.2.2** Upon the execution of the Guaranteed Maximum Price Amendment, the Construction Manager shall prepare and submit to the Owner and Architect a construction schedule for the Work and a submittal schedule in accordance with Section 3.10 of A201–2017.

### **§ 3.3.2.3 Monthly Report**

The Construction Manager shall record the progress of the Project. On a monthly basis, or otherwise as agreed to by the Owner, the Construction Manager shall submit written progress reports to the Owner and Architect, showing percentages of completion and other information required by the Owner.

### **§ 3.3.2.4 Daily Logs**

The Construction Manager shall keep, and make available to the Owner and Architect, a daily log containing a record for each day of weather, portions of the Work in progress, number of workers on site, identification of equipment on site, problems that might affect progress of the work, accidents, injuries, and other information required by the Owner.

### **§ 3.3.2.5 Cost Control**

The Construction Manager shall develop a system of cost control for the Work, including regular monitoring of actual costs for activities in progress and estimates for uncompleted tasks and proposed changes. The Construction Manager shall identify variances between actual and estimated costs and report the variances to the Owner and Architect, and shall provide this information in its monthly reports to the Owner and Architect, in accordance with Section 3.3.2.3 above.

## **ARTICLE 4 OWNER'S RESPONSIBILITIES**

### **§ 4.1 Information and Services Required of the Owner**

**§ 4.1.1** The Owner shall provide information with reasonable promptness, regarding requirements for and limitations on the Project, including a written program which shall set forth the Owner's objectives, constraints, and criteria, including schedule, space requirements and relationships, flexibility and expandability, special equipment, systems, sustainability and site requirements.

**§ 4.1.2** Prior to the execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. After execution of the Guaranteed Maximum Price Amendment, the Construction Manager may request such information as set forth in A201-2017 Section 2.2.

**§ 4.1.3** The Owner shall establish and periodically update the Owner's budget for the Project, including (1) the budget for the Cost of the Work as defined in Article 7, (2) the Owner's other costs, and (3) reasonable contingencies related to all of these costs. If the Owner significantly increases or decreases the Owner's budget for the Cost of the Work, the Owner shall notify the Construction Manager and Architect. The Owner and the Architect, in consultation with the Construction Manager, shall thereafter agree to a corresponding change in the Project's scope and quality.

**§ 4.1.4 Structural and Environmental Tests, Surveys and Reports.** During the Preconstruction Phase, the Owner shall furnish the following information or services with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services. The Construction Manager shall be entitled to rely on the accuracy of information and services furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

§ 4.1.4.1 The Owner shall furnish tests, inspections, and reports, required by law and as otherwise agreed to by the parties, such as structural, mechanical, and chemical tests, tests for air and water pollution, and tests for hazardous materials.

§ 4.1.4.2 The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a written legal description of the site. The surveys and legal information shall include, as applicable, grades and lines of streets, alleys, pavements and adjoining property and structures; designated wetlands; adjacent drainage; rights-of-way, restrictions, easements, encroachments, zoning, deed restrictions, boundaries and contours of the site; locations, dimensions and other necessary data with respect to existing buildings, other improvements and trees; and information concerning available utility services and lines, both public and private, above and below grade, including inverts and depths. All the information on the survey shall be referenced to a Project benchmark.

§ 4.1.4.3 The Owner, when such services are requested, shall furnish services of geotechnical engineers, which may include test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, seismic evaluation, ground corrosion tests and resistivity tests, including necessary operations for anticipating subsoil conditions, with written reports and appropriate recommendations.

§ 4.1.5 During the Construction Phase, the Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Construction Manager's performance of the Work with reasonable promptness after receiving the Construction Manager's written request for such information or services.

*(Paragraph Deleted)*

#### § 4.2 Owner's Designated Representative

The Owner shall identify a representative authorized to act on behalf of the Owner with respect to the Project. The Owner's representative shall render decisions promptly and furnish information expeditiously, so as to avoid unreasonable delay in the services or Work of the Construction Manager. Except as otherwise provided in Section 4.2.1 of A201–2017, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

§ 4.2.1 **Legal Requirements.** The Owner shall furnish all legal, insurance and accounting services, including auditing services, that may be reasonably necessary at any time for the Project to meet the Owner's needs and interests.

#### § 4.3 Architect

The Owner shall retain an Architect to provide services, duties and responsibilities as described in AIA Document B133™–2019, Standard Form of Agreement Between Owner and Architect, Construction Manager as Constructor Edition, including any additional services requested by the Construction Manager that are necessary for the Preconstruction and Construction Phase services under this Agreement. The Owner shall provide the Construction Manager with a copy of the scope of services in the executed agreement between the Owner and the Architect, and any further modifications to the Architect's scope of services in the agreement.

### ARTICLE 5 COMPENSATION AND PAYMENTS FOR PRECONSTRUCTION PHASE SERVICES

#### § 5.1 Compensation

§ 5.1.1 For the Construction Manager's Preconstruction Phase services described in Sections 3.1 and 3.2, the Owner shall compensate the Construction Manager as follows:

*(Insert amount of, or basis for, compensation and include a list of reimbursable cost items, as applicable.)*

None

*(Paragraphs Deleted)*

(Table Deleted)

(Paragraph Deleted)

**§ 5.1.2** If the Preconstruction Phase services covered by this Agreement have not been completed within n/a ( n/a ) months of the date of this Agreement, through no fault of the Construction Manager, the Construction Manager's compensation for Preconstruction Phase services shall be equitably adjusted.

## **§ 5.2 Payments**

**§ 5.2.1** Unless otherwise agreed, payments for services shall be made monthly in proportion to services performed.

**§ 5.2.2** Payments are due and payable upon presentation of the Construction Manager's invoice. Amounts unpaid Seventy-five ( 75 ) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Construction Manager.  
(Insert rate of monthly or annual interest agreed upon.)

12 % per annum

## **ARTICLE 6 COMPENSATION FOR CONSTRUCTION PHASE SERVICES**

### **§ 6.1 Contract Sum**

**§ 6.1.1** The Owner shall pay the Construction Manager the Contract Sum in current funds for the Construction Manager's performance of the Contract after execution of the Guaranteed Maximum Price Amendment. The Contract Sum is the Cost of the Work as defined in Article 7 plus the Construction Manager's Fee.

**§ 6.1.2** The Construction Manager's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Construction Manager's Fee.)

The Construction Manager will be reimbursed a fee of 7.5% (seven and one half percent) applied to all direct costs and general conditions. Fee is inclusive of overhead markup and profit markup

**§ 6.1.3** The method of adjustment of the Construction Manager's Fee for changes in the Work:

A 7.5% (seven and one half percent) fee shall be applied to all additional direct costs and general conditions associated with adjustments to the scope of work, unless otherwise agreed to by the parties.

**§ 6.1.4** Limitations, if any, on a Subcontractor's overhead and profit for increases in the cost of its portion of the Work:

10% (ten percent) per subcontractor and 10% (ten percent) for their lower tier subcontractors.

**§ 6.1.5** Rental rates for Construction Manager-owned equipment shall not exceed Ninety percent ( 90.00 %) of the standard rental rate paid at the place of the Project.

**§ 6.1.6** Liquidated damages, if any:

(Insert terms and conditions for liquidated damages, if any.)

,If work is not completed by the time specified by section 1.1.4 of this document the parties recognize that the City may experience financial loss. Rather than requiring proof of such financial loss, the City and the Contractor agree that as liquidated damages for delay, the contractor shall pay the City \$750 for each day that expires after the time for completion.

**§ 6.1.7** Other:

(Insert provisions for bonus, cost savings or other incentives, if any, that might result in a change to the Contract Sum.)

Any savings accrued during construction shall accrue 80% to the Owner and 20% to the Construction Manager.

## **§ 6.2 Guaranteed Maximum Price**

The Construction Manager guarantees that the Contract Sum shall not exceed the Guaranteed Maximum Price set forth in the Guaranteed Maximum Price Amendment, subject to additions and deductions by Change Order as provided in the Contract Documents. Costs which would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Construction Manager without reimbursement by the Owner.

## **§ 6.3 Changes in the Work**

**§ 6.3.1** The Owner may, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions. The Owner shall issue such changes in writing. The Construction Manager may be entitled to an equitable adjustment in the Contract Time as a result of changes in the Work.

**§ 6.3.1.1** The Architect may order minor changes in the Work as provided in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.2** Adjustments to the Guaranteed Maximum Price on account of changes in the Work subsequent to the execution of the Guaranteed Maximum Price Amendment may be determined by any of the methods listed in Article 7 of AIA Document A201–2017, General Conditions of the Contract for Construction.

**§ 6.3.3** Adjustments to subcontracts awarded on the basis of a stipulated sum shall be determined in accordance with Article 7 of A201–2017, as they refer to “cost” and “fee,” and not by Articles 6 and 7 of this Agreement. Adjustments to subcontracts awarded with the Owner’s prior written consent on the basis of cost plus a fee shall be calculated in accordance with the terms of those subcontracts.

**§ 6.3.4** In calculating adjustments to the Guaranteed Maximum Price, the terms “cost” and “costs” as used in Article 7 of AIA Document A201–2017 shall mean the Cost of the Work as defined in Article 7 of this Agreement and the term “fee” shall mean the Construction Manager’s Fee as defined in Section 6.1.2 of this Agreement.

**§ 6.3.5** If no specific provision is made in Section 6.1.3 for adjustment of the Construction Manager’s Fee in the case of changes in the Work, or if the extent of such changes is such, in the aggregate, that application of the adjustment provisions of Section 6.1.3 will cause substantial inequity to the Owner or Construction Manager, the Construction Manager’s Fee shall be equitably adjusted on the same basis that was used to establish the Fee for the original Work, and the Guaranteed Maximum Price shall be adjusted accordingly.

## **ARTICLE 7 COST OF THE WORK FOR CONSTRUCTION PHASE**

### **§ 7.1 Costs to Be Reimbursed**

**§ 7.1.1** The term Cost of the Work shall mean costs necessarily incurred by the Construction Manager in the proper performance of the Work. The Cost of the Work shall include only the items set forth in Sections 7.1 through 7.7.

**§ 7.1.2** Where, pursuant to the Contract Documents, any cost is subject to the Owner’s prior approval, the Construction Manager shall obtain such approval in writing prior to incurring the cost.

**§ 7.1.3** Costs shall be at rates not higher than the standard rates paid at the place of the Project, except with prior approval of the Owner.

### **§ 7.2 Labor Costs**

**§ 7.2.1** Wages or salaries of construction workers directly employed by the Construction Manager to perform the construction of the Work at the site or, with the Owner’s prior approval, at off-site workshops.

**§ 7.2.2** Wages or salaries of the Construction Manager’s supervisory and administrative personnel when stationed at the site and performing Work, with the Owner’s prior approval.

**§ 7.2.2.1** Wages or salaries of the Construction Manager’s supervisory and administrative personnel when performing Work and stationed at a location other than the site, but only for that portion of time required for the Work, and limited to the personnel and activities listed below:

*(Identify the personnel, type of activity and, if applicable, any agreed upon percentage of time to be devoted to the Work.)*

None

**§ 7.2.3** Wages and salaries of the Construction Manager’s supervisory or administrative personnel engaged at factories, workshops or while traveling, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

**§ 7.2.4** Costs paid or incurred by the Construction Manager, as required by law or collective bargaining agreements, for taxes, insurance, contributions, assessments and benefits and, for personnel not covered by collective bargaining agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Sections 7.2.1 through 7.2.3.

**§ 7.2.5** If agreed rates for labor costs, in lieu of actual costs, are provided in this Agreement, the rates shall remain unchanged throughout the duration of this Agreement, unless the parties execute a Modification.

### **§ 7.3 Subcontract Costs**

Payments made by the Construction Manager to Subcontractors in accordance with the requirements of the subcontracts and this Agreement.

### **§ 7.4 Costs of Materials and Equipment Incorporated in the Completed Construction**

**§ 7.4.1** Costs, including transportation and storage at the site, of materials and equipment incorporated, or to be incorporated, in the completed construction.

**§ 7.4.2** Costs of materials described in the preceding Section 7.4.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner’s property at the completion of the Work or, at the Owner’s option, shall be sold by the Construction Manager. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

### **§ 7.5 Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

**§ 7.5.1** Costs of transportation, storage, installation, dismantling, maintenance, and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment, and tools, that are not fully consumed, shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Construction Manager shall mean fair market value.

**§ 7.5.2** Rental charges for temporary facilities, machinery, equipment, and hand tools not customarily owned by construction workers that are provided by the Construction Manager at the site, and the costs of transportation, installation, dismantling, minor repairs, and removal of such temporary facilities, machinery, equipment, and hand tools. Rates and quantities of equipment owned by the Construction Manager, or a related party as defined in Section 7.8, shall be subject to the Owner’s prior approval. The total rental cost of any such equipment may not exceed the purchase price of any comparable item.

**§ 7.5.3** Costs of removal of debris from the site of the Work and its proper and legal disposal.

**§ 7.5.4** Costs of the Construction Manager’s site office, including general office equipment and supplies.

**§ 7.5.5** Costs of materials and equipment suitably stored off the site at a mutually acceptable location, subject to the Owner’s prior approval.

### **§ 7.6 Miscellaneous Costs**

**§ 7.6.1** Premiums for that portion of insurance and bonds required by the Contract Documents that can be directly attributed to this Contract.

Init.

**§ 7.6.1.1** Costs for self-insurance, for either full or partial amounts of the coverages required by the Contract Documents, with the Owner's prior approval.

**§ 7.6.1.2** Costs for insurance through a captive insurer owned or controlled by the Construction Manager, with the Owner's prior approval.

**§ 7.6.2** Sales, use, or similar taxes, imposed by a governmental authority, that are related to the Work and for which the Construction Manager is liable.

**§ 7.6.3** Fees and assessments for the building permit, and for other permits, licenses, and inspections, for which the Construction Manager is required by the Contract Documents to pay.

**§ 7.6.4** Fees of laboratories for tests required by the Contract Documents; except those related to defective or nonconforming Work for which reimbursement is excluded under Article 13 of AIA Document A201–2017 or by other provisions of the Contract Documents, and which do not fall within the scope of Section 7.7.3.

**§ 7.6.5** Royalties and license fees paid for the use of a particular design, process, or product, required by the Contract Documents.

**§ 7.6.5.1** The cost of defending suits or claims for infringement of patent rights arising from requirements of the Contract Documents, payments made in accordance with legal judgments against the Construction Manager resulting from such suits or claims, and payments of settlements made with the Owner's consent, unless the Construction Manager had reason to believe that the required design, process, or product was an infringement of a copyright or a patent, and the Construction Manager failed to promptly furnish such information to the Architect as required by Article 3 of AIA Document A201–2017. The costs of legal defenses, judgments, and settlements shall not be included in the Cost of the Work used to calculate the Construction Manager's Fee or subject to the Guaranteed Maximum Price.

**§ 7.6.6** Costs for communications services, electronic equipment, and software, directly related to the Work and located at the site, with the Owner's prior approval.

**§ 7.6.7** Costs of document reproductions and delivery charges.

**§ 7.6.8** Deposits lost for causes other than the Construction Manager's negligence or failure to fulfill a specific responsibility in the Contract Documents.

**§ 7.6.9** Legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Construction Manager, reasonably incurred by the Construction Manager after the execution of this Agreement in the performance of the Work and with the Owner's prior approval, which shall not be unreasonably withheld.

**§ 7.6.10** Expenses incurred in accordance with the Construction Manager's standard written personnel policy for relocation and temporary living allowances of the Construction Manager's personnel required for the Work, with the Owner's prior approval.

**§ 7.6.11** That portion of the reasonable expenses of the Construction Manager's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

## **§ 7.7 Other Costs and Emergencies**

**§ 7.7.1** Other costs incurred in the performance of the Work, with the Owner's prior written approval.

**§ 7.7.2** Costs incurred in taking action to prevent threatened damage, injury, or loss, in case of an emergency affecting the safety of persons and property, as provided in Article 10 of AIA Document A201–2017.

**§ 7.7.3** Costs of repairing or correcting damaged or nonconforming Work executed by the Construction Manager, Subcontractors, or suppliers, provided that such damaged or nonconforming Work was not caused by the negligence

of, or failure to fulfill a specific responsibility by, the Construction Manager, and only to the extent that the cost of repair or correction is not recovered by the Construction Manager from insurance, sureties, Subcontractors, suppliers, or others.

**§ 7.7.4** The costs described in Sections 7.1 through 7.7 shall be included in the Cost of the Work, notwithstanding any provision of AIA Document A201–2017 or other Conditions of the Contract which may require the Construction Manager to pay such costs, unless such costs are excluded by the provisions of Section 7.9.

### **§ 7.8 Related Party Transactions**

**§ 7.8.1** For purposes of this Section 7.8, the term “related party” shall mean (1) a parent, subsidiary, affiliate, or other entity having common ownership of, or sharing common management with, the Construction Manager; (2) any entity in which any stockholder in, or management employee of, the Construction Manager holds an equity interest in excess of ten percent in the aggregate; (3) any entity which has the right to control the business or affairs of the Construction Manager; or (4) any person, or any member of the immediate family of any person, who has the right to control the business or affairs of the Construction Manager.

**§ 7.8.2** If any of the costs to be reimbursed arise from a transaction between the Construction Manager and a related party, the Construction Manager shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction in writing, then the cost incurred shall be included as a cost to be reimbursed, and the Construction Manager shall procure the Work, equipment, goods, or service, from the related party, as a Subcontractor, according to the terms of Article 9. If the Owner fails to authorize the transaction in writing, the Construction Manager shall procure the Work, equipment, goods, or service from some person or entity other than a related party according to the terms of Article 9.

### **§ 7.9 Costs Not To Be Reimbursed**

**§ 7.9.1** The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Construction Manager’s personnel stationed at the Construction Manager’s principal office or offices other than the site office, except as specifically provided in Section 7.2, or as may be provided in Article 14;
- .2 Bonuses, profit sharing, incentive compensation, and any other discretionary payments, paid to anyone hired by the Construction Manager or paid to any Subcontractor or vendor, unless the Owner has provided prior approval;
- .3 Expenses of the Construction Manager’s principal office and offices other than the site office;
- .4 Overhead and general expenses, except as may be expressly included in Sections 7.1 to 7.7;
- .5 The Construction Manager’s capital expenses, including interest on the Construction Manager’s capital employed for the Work;
- .6 Except as provided in Section 7.7.3 of this Agreement, costs due to the negligence of, or failure to fulfill a specific responsibility of the Contract by, the Construction Manager, Subcontractors, and suppliers, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable;
- .7 Any cost not specifically and expressly described in Sections 7.1 to 7.7;
- .8 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded; and
- .9 Costs for services incurred during the Preconstruction Phase.

## **ARTICLE 8 DISCOUNTS, REBATES, AND REFUNDS**

**§ 8.1** Cash discounts obtained on payments made by the Construction Manager shall accrue to the Owner if (1) before making the payment, the Construction Manager included the amount to be paid, less such discount, in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Construction Manager with which to make payments; otherwise, cash discounts shall accrue to the Construction Manager. Trade discounts, rebates, refunds, and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Construction Manager shall make provisions so that they can be obtained.

**§ 8.2** Amounts that accrue to the Owner in accordance with the provisions of Section 8.1 shall be credited to the Owner as a deduction from the Cost of the Work.



## ARTICLE 9 SUBCONTRACTS AND OTHER AGREEMENTS

§ 9.1 Those portions of the Work that the Construction Manager does not customarily perform with the Construction Manager's own personnel shall be performed under subcontracts or other appropriate agreements with the Construction Manager. The Owner may designate specific persons from whom, or entities from which, the Construction Manager shall obtain bids. The Construction Manager shall obtain bids from Subcontractors, and from suppliers of materials or equipment fabricated especially for the Work, who are qualified to perform that portion of the Work in accordance with the requirements of the Contract Documents. The Construction Manager shall deliver such bids to the Architect and Owner with an indication as to which bids the Construction Manager intends to accept. The Owner then has the right to review the Construction Manager's list of proposed subcontractors and suppliers in consultation with the Architect and, subject to Section 9.1.1, to object to any subcontractor or supplier. Any advice of the Architect, or approval or objection by the Owner, shall not relieve the Construction Manager of its responsibility to perform the Work in accordance with the Contract Documents. The Construction Manager shall not be required to contract with anyone to whom the Construction Manager has reasonable objection.

§ 9.1.1 When a specific subcontractor or supplier (1) is recommended to the Owner by the Construction Manager; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Contract Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Construction Manager may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Construction Manager and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ 9.2 Subcontracts or other agreements shall conform to the applicable payment provisions of this Agreement, and shall not be awarded on the basis of cost plus a fee without the Owner's prior written approval. If a subcontract is awarded on the basis of cost plus a fee, the Construction Manager shall provide in the subcontract for the Owner to receive the same audit rights with regard to the Subcontractor as the Owner receives with regard to the Construction Manager in Article 10.

## ARTICLE 10 ACCOUNTING RECORDS

The Construction Manager shall keep full and detailed records and accounts related to the Cost of the Work, and exercise such controls, as may be necessary for proper financial management under this Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Construction Manager's records and accounts, including complete documentation supporting accounting entries, books, job cost reports, correspondence, instructions, drawings, receipts, subcontracts, Subcontractor's proposals, Subcontractor's invoices, purchase orders, vouchers, memoranda, and other data relating to this Contract. The Construction Manager shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

## ARTICLE 11 PAYMENTS FOR CONSTRUCTION PHASE SERVICES

### § 11.1 Progress Payments

§ 11.1.1 Based upon Applications for Payment submitted to the Architect by the Construction Manager, and Certificates for Payment issued by the Architect, the Owner shall make progress payments on account of the Contract Sum, to the Construction Manager, as provided below and elsewhere in the Contract Documents.

§ 11.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month

§ 11.1.3 Provided that an Application for Payment is received by the Architect not later than the fifth day of a month, the Owner shall make payment of the amount certified to the Construction Manager not later than the fifth day of the following month. If an Application for Payment is received by the Architect after the application date fixed above, payment of the amount certified shall be made by the Owner not later than thirty-five ( 35 ) days after the Architect receives the Application for Payment.

*(Federal, state or local laws may require payment within a certain period of time.)*

§ 11.1.4 With each Application for Payment, the Construction Manager shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner or

Architect to demonstrate that payments already made by the Construction Manager on account of the Cost of the Work equal or exceed progress payments already received by the Construction Manager, plus payrolls for the period covered by the present Application for Payment, less that portion of the progress payments attributable to the Construction Manager's Fee.

**§ 11.1.5** Each Application for Payment shall be based on the most recent schedule of values submitted by the Construction Manager in accordance with the Contract Documents. The schedule of values shall allocate the entire Guaranteed Maximum Price among: (1) the various portions of the Work; (2) any contingency for costs that are included in the Guaranteed Maximum Price but not otherwise allocated to another line item or included in a Change Order; and (3) the Construction Manager's Fee.

**§ 11.1.5.1** The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Architect may require. The schedule of values shall be used as a basis for reviewing the Construction Manager's Applications for Payment.

**§ 11.1.5.2** The allocation of the Guaranteed Maximum Price under this Section 11.1.5 shall not constitute a separate guaranteed maximum price for the Cost of the Work of each individual line item in the schedule of values.

**§ 11.1.5.3** When the Construction Manager allocates costs from a contingency to another line item in the schedule of values, the Construction Manager shall submit supporting documentation to the Architect.

**§ 11.1.6** Applications for Payment shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed, or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Construction Manager on account of that portion of the Work and for which the Construction Manager has made payment or intends to make payment prior to the next Application for Payment, by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

**§ 11.1.7** In accordance with AIA Document A201–2017 and subject to other provisions of the Contract Documents, the amount of each progress payment shall be computed as follows:

**§ 11.1.7.1** The amount of each progress payment shall first include:

- .1 Costs of Work and Fee as defined by this contract.

*(Paragraphs Deleted)*

**§ 11.1.7.2** The amount of each progress payment shall then be reduced by:

- .1 The aggregate of any amounts previously paid by the Owner;
- .2

*(Paragraphs Deleted)*

Retainage withheld pursuant to Section 11.1.8.

### **§ 11.1.8 Retainage**

**§ 11.1.8.1** For each progress payment made prior to Substantial Completion of the Work, the Owner may withhold the following amount, as retainage, from the payment otherwise due:

*(Insert a percentage or amount to be withheld as retainage from each Application for Payment. The amount of retainage may be limited by governing law.)*

5%

**§ 11.1.8.1.1** The following items are not subject to retainage:

*(Insert any items not subject to the withholding of retainage, such as general conditions, insurance, etc.)*

None

§ 11.1.8.2 Reduction or limitation of retainage, if any, shall be as follows:

*(If the retainage established in Section 11.1.8.1 is to be modified prior to Substantial Completion of the entire Work, insert provisions for such modification.)*

After substantial completion is reached, Owner and Construction Manager may agree to a reduction of retainage.

After such mutual agreement, Construction Manager may submit an Application for Payment which facilitates said reduction of retainage.

§ 11.1.8.3 Except as set forth in this Section 11.1.8.3, upon Substantial Completion of the Work, the Construction Manager may submit an Application for Payment that includes the retainage withheld from prior Applications for Payment pursuant to this Section 11.1.8. The Application for Payment submitted at Substantial Completion shall not include retainage as follows:

*(Insert any other conditions for release of retainage, such as upon completion of the Owner's audit and reconciliation, upon Substantial Completion.)*

None

§ 11.1.9 If final completion of the Work is materially delayed through no fault of the Construction Manager, the Owner shall pay the Construction Manager any additional amounts in accordance with Article 9 of AIA Document A201-2017.

§ 11.1.10 Except with the Owner's prior written approval, the Construction Manager shall not make advance payments to suppliers for materials or equipment which have not been delivered and suitably stored at the site.

§ 11.1.11 The Owner and the Construction Manager shall agree upon a mutually acceptable procedure for review and approval of payments to Subcontractors, and the percentage of retainage held on Subcontracts, and the Construction Manager shall execute subcontracts in accordance with those agreements.

§ 11.1.12 In taking action on the Construction Manager's Applications for Payment the Architect shall be entitled to rely on the accuracy and completeness of the information furnished by the Construction Manager, and such action shall not be deemed to be a representation that (1) the Architect has made a detailed examination, audit, or arithmetic verification, of the documentation submitted in accordance with Section 11.1.4 or other supporting data; (2) that the Architect has made exhaustive or continuous on-site inspections; or (3) that the Architect has made examinations to ascertain how or for what purposes the Construction Manager has used amounts previously paid on account of the Contract. Such examinations, audits, and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

## § 11.2 Final Payment

§ 11.2.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Construction Manager when

- .1 the Construction Manager has fully performed the Contract, except for the Construction Manager's responsibility to correct Work as provided in Article 12 of AIA Document A201-2017, and to satisfy other requirements, if any, which extend beyond final payment;
- .2 the Construction Manager has submitted a final accounting for the Cost of the Work and a final Application for Payment; and
- .3 a final Certificate for Payment has been issued by the Architect in accordance with Section 11.2.2.2.

§ 11.2.2 Within 30 days of the Owner's receipt of the Construction Manager's final accounting for the Cost of the Work, the Owner shall conduct an audit of the Cost of the Work or notify the Architect that it will not conduct an audit.

§ 11.2.2.1 If the Owner conducts an audit of the Cost of the Work, the Owner shall, within 10 days after completion of the audit, submit a written report based upon the auditors' findings to the Architect.

§ 11.2.2.2 Within seven days after receipt of the written report described in Section 11.2.2.1, or receipt of notice that the Owner will not conduct an audit, and provided that the other conditions of Section 11.2.1 have been met, the

Architect will either issue to the Owner a final Certificate for Payment with a copy to the Construction Manager, or notify the Construction Manager and Owner in writing of the Architect's reasons for withholding a certificate as provided in Article 9 of AIA Document A201–2017. The time periods stated in this Section 11.2.2 supersede those stated in Article 9 of AIA Document A201–2017. The Architect is not responsible for verifying the accuracy of the Construction Manager's final accounting.

**§ 11.2.2.3** If the Owner's auditors' report concludes that the Cost of the Work, as substantiated by the Construction Manager's final accounting, is less than claimed by the Construction Manager, the Construction Manager shall be entitled to request mediation of the disputed amount without seeking an initial decision pursuant to Article 15 of AIA Document A201–2017. A request for mediation shall be made by the Construction Manager within 30 days after the Construction Manager's receipt of a copy of the Architect's final Certificate for Payment. Failure to request mediation within this 30-day period shall result in the substantiated amount reported by the Owner's auditors becoming binding on the Construction Manager. Pending a final resolution of the disputed amount, the Owner shall pay the Construction Manager the amount certified in the Architect's final Certificate for Payment.

**§ 11.2.3** The Owner's final payment to the Construction Manager shall be made no later than 30 days after the issuance of the Architect's final Certificate for Payment.

**§ 11.2.4** If, subsequent to final payment, and at the Owner's request, the Construction Manager incurs costs, described in Sections 7.1 through 7.7, and not excluded by Section 7.9, to correct defective or nonconforming Work, the Owner shall reimburse the Construction Manager for such costs, and the Construction Manager's Fee applicable thereto, on the same basis as if such costs had been incurred prior to final payment, but not in excess of the Guaranteed Maximum Price. If adjustments to the Contract Sum are provided for in Section 6.1.7, the amount of those adjustments shall be recalculated, taking into account any reimbursements made pursuant to this Section 11.2.4 in determining the net amount to be paid by the Owner to the Construction Manager.

### **§ 11.3 Interest**

Payments due and unpaid under the Contract shall bear interest from the date payment is due at the rate stated below, or in the absence thereof, at the legal rate prevailing from time to time at the place where the Project is located. Interest shall not accrue until 75 days after the invoice date.

*(Insert rate of interest agreed upon, if any.)*

12 % per annum

## **ARTICLE 12 DISPUTE RESOLUTION**

### **§ 12.1 Initial Decision Maker**

**§ 12.1.1** Any Claim between the Owner and Construction Manager shall be resolved in accordance with the provisions set forth in this Article 12 and Article 15 of A201–2017. However, for Claims arising from or relating to the Construction Manager's Preconstruction Phase services, no decision by the Initial Decision Maker shall be required as a condition precedent to mediation or binding dispute resolution, and Section 12.1.2 of this Agreement shall not apply.

**§ 12.1.2** The Architect will serve as the Initial Decision Maker pursuant to Article 15 of AIA Document A201–2017 for Claims arising from or relating to the Construction Manager's Construction Phase services, unless the parties appoint below another individual, not a party to the Agreement, to serve as the Initial Decision Maker.

*(If the parties mutually agree, insert the name, address and other contact information of the Initial Decision Maker, if other than the Architect.)*

### **§ 12.2 Binding Dispute Resolution**

For any Claim subject to, but not resolved by mediation pursuant to Article 15 of AIA Document A201–2017, the method of binding dispute resolution shall be as follows:

*(Check the appropriate box.)*

Arbitration pursuant to Article 15 of AIA Document A201–2017

Litigation in a court of competent jurisdiction

Other: *(Specify)*

Mediation, as described in A201 General Conditions Agreement should the 'Initial Decision' method of resolution as described fail to resolve the subject dispute.

If the Owner and Construction Manager do not select a method of binding dispute resolution, or do not subsequently agree in writing to a binding dispute resolution method other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.

## **ARTICLE 13 TERMINATION OR SUSPENSION**

### **§ 13.1 Termination Prior to Execution of the Guaranteed Maximum Price Amendment**

**§ 13.1.1** If the Owner and the Construction Manager do not reach an agreement on the Guaranteed Maximum Price, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner.

**§ 13.1.2** In the event of termination of this Agreement pursuant to Section 13.1.1, the Construction Manager shall be compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination, in accordance with the terms of this Agreement. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.3** Prior to the execution of the Guaranteed Maximum Price Amendment, the Owner may terminate this Agreement upon not less than seven days' written notice to the Construction Manager for the Owner's convenience and without cause, and the Construction Manager may terminate this Agreement, upon not less than seven days' written notice to the Owner, for the reasons set forth in Article 14 of A201–2017.

**§ 13.1.4** In the event of termination of this Agreement pursuant to Section 13.1.3, the Construction Manager shall be equitably compensated for Preconstruction Phase services and Work performed prior to receipt of a notice of termination. In no event shall the Construction Manager's compensation under this Section exceed the compensation set forth in Section 5.1.

**§ 13.1.5** If the Owner terminates the Contract pursuant to Section 13.1.3 after the commencement of the Construction Phase but prior to the execution of the Guaranteed Maximum Price Amendment, the Owner shall pay to the Construction Manager an amount calculated as follows, which amount shall be in addition to any compensation paid to the Construction Manager under Section 13.1.4:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion; and
- .3 Subtract the aggregate of previous payments made by the Owner for Construction Phase services.

**§ 13.1.6** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.1.5.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders. All Subcontracts, purchase orders

and rental agreements entered into by the Construction Manager will contain provisions allowing for assignment to the Owner as described above.

**§ 13.1.6.1** If the Owner accepts assignment of subcontracts, purchase orders or rental agreements as described above, the Owner will reimburse or indemnify the Construction Manager for all costs arising under the subcontract, purchase order or rental agreement, if those costs would have been reimbursable as Cost of the Work if the contract had not been terminated. If the Owner chooses not to accept assignment of any subcontract, purchase order or rental agreement that would have constituted a Cost of the Work had this agreement not been terminated, the Construction Manager will terminate the subcontract, purchase order or rental agreement and the Owner will pay the Construction Manager the costs necessarily incurred by the Construction Manager because of such termination.

## **§ 13.2 Termination or Suspension Following Execution of the Guaranteed Maximum Price Amendment**

### **§ 13.2.1 Termination**

The Contract may be terminated by the Owner or the Construction Manager as provided in Article 14 of AIA Document A201–2017.

### **§ 13.2.2 Termination by the Owner for Cause**

**§ 13.2.2.1** If the Owner terminates the Contract for cause as provided in Article 14 of AIA Document A201–2017, the amount, if any, to be paid to the Construction Manager under Article 14 of AIA Document A201–2017 shall not cause the Guaranteed Maximum Price to be exceeded, nor shall it exceed an amount calculated as follows:

- .1 Take the Cost of the Work incurred by the Construction Manager to the date of termination;
- .2 Add the Construction Manager's Fee, computed upon the Cost of the Work to the date of termination at the rate stated in Section 6.1 or, if the Construction Manager's Fee is stated as a fixed sum in that Section, an amount that bears the same ratio to that fixed-sum Fee as the Cost of the Work at the time of termination bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract the costs and damages incurred, or to be incurred, by the Owner under Article 14 of AIA Document A201–2017.

**§ 13.2.2.2** The Owner shall also pay the Construction Manager fair compensation, either by purchase or rental at the election of the Owner, for any equipment owned by the Construction Manager that the Owner elects to retain and that is not otherwise included in the Cost of the Work under Section 13.2.2.1.1. To the extent that the Owner elects to take legal assignment of subcontracts and purchase orders (including rental agreements), the Construction Manager shall, as a condition of receiving the payments referred to in this Article 13, execute and deliver all such papers and take all such steps, including the legal assignment of such subcontracts and other contractual rights of the Construction Manager, as the Owner may require for the purpose of fully vesting in the Owner the rights and benefits of the Construction Manager under such subcontracts or purchase orders.

### **§ 13.2.3 Termination by the Owner for Convenience**

If the Owner terminates the Contract for convenience in accordance with Article 14 of AIA Document A201–2017, then the Owner shall pay the Construction Manager a termination fee as follows:

*(Insert the amount of or method for determining the fee, if any, payable to the Construction Manager following a termination for the Owner's convenience.)*

A fee of 7.5% of all direct costs and general conditions paid under the contract, not to exceed the amount the Construction Manager would have otherwise received pursuant to this Contract.

## **§ 13.3 Suspension**

The Work may be suspended by the Owner as provided in Article 14 of AIA Document A201–2017; in such case, the Guaranteed Maximum Price and Contract Time shall be increased as provided in Article 14 of AIA Document A201–2017, except that the term "profit" shall be understood to mean the Construction Manager's Fee as described in Sections 6.1 and 6.3.5 of this Agreement.

## **ARTICLE 14 MISCELLANEOUS PROVISIONS**

**§ 14.1** Terms in this Agreement shall have the same meaning as those in A201–2017. Where reference is made in this Agreement to a provision of AIA Document A201–2017 or another Contract Document, the reference refers to that provision as amended or supplemented by other provisions of the Contract Documents.

**§ 14.2 Successors and Assigns**

**§ 14.2.1** The Owner and Construction Manager, respectively, bind themselves, their partners, successors, assigns and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 14.2.2 of this Agreement, and in Section 13.2.2 of A201–2017, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 14.2.2** The Owner may, without consent of the Construction Manager, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner’s rights and obligations under the Contract Documents. The Construction Manager shall execute all consents reasonably required to facilitate the assignment.

**§ 14.3 Insurance and Bonds**

**§ 14.3.1 Preconstruction Phase**

The Construction Manager shall maintain the following insurance for the duration of the Preconstruction Services performed under this Agreement. If any of the requirements set forth below exceed the types and limits the Construction Manager normally maintains, the Owner shall reimburse the Construction Manager for any additional cost.

**§ 14.3.1.1** Commercial General Liability with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2000000.00 ) for each occurrence and 2000000.00 (\$ Two Million Dollars and Zero Cents ) in the aggregate for bodily injury and property damage.

**§ 14.3.1.2** Automobile Liability covering vehicles owned, and non-owned vehicles used, by the Construction Manager with policy limits of not less than Two Million Dollars and Zero Cents (\$ 2000000.00 ) per accident for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles, along with any other statutorily required automobile coverage.

**§ 14.3.1.3** The Construction Manager may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess or umbrella liability insurance, provided that such primary and excess or umbrella liability insurance policies result in the same or greater coverage as the coverages required under Sections 14.3.1.1 and 14.3.1.2, and in no event shall any excess or umbrella liability insurance provide narrower coverage than the primary policy. The excess policy shall not require the exhaustion of the underlying limits only through the actual payment by the underlying insurers.

**§ 14.3.1.4** Workers’ Compensation at statutory limits and Employers Liability with policy limits not less than One Million Dollars and Zero Cents (\$ 1000000.00 ) each accident, One Million Dollars and Zero Cents (\$ 1000000.00 ) each employee, and One Million Dollars and Zero Cents (\$ 1000000.00 ) policy limit.

**§ 14.3.1.5** Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than ( \$ ) per claim and ( \$ ) in the aggregate.

**§ 14.3.1.6 Other Insurance**

*(List below any other insurance coverage to be provided by the Construction Manager and any applicable limits.)*

**Coverage**

**Limits**

**§ 14.3.1.7** Additional Insured Obligations. To the fullest extent permitted by law, the Construction Manager shall cause the primary and excess or umbrella policies for Commercial General Liability and Automobile Liability to include the Owner as an additional insured for claims caused in whole or in part by the Construction Manager’s negligent acts or omissions. The additional insured coverage shall be primary and non-contributory to any of the Owner’s insurance policies and shall apply to both ongoing and completed operations.

**§ 14.3.1.8** The Construction Manager shall provide certificates of insurance to the Owner that evidence compliance with the requirements in this Section 14.3.1.

**§ 14.3.2 Construction Phase**

After execution of the Guaranteed Maximum Price Amendment, the Owner and the Construction Manager shall purchase and maintain insurance as set forth in AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price, Exhibit B, Insurance and Bonds, and elsewhere in the Contract Documents.

**§ 14.3.2.1** The Construction Manager shall provide bonds as set forth in AIA Document A133™–2019 Exhibit B, and elsewhere in the Contract Documents.

**§ 14.4** Notice in electronic format, pursuant to Article 1 of AIA Document A201–2017, may be given in accordance with AIA Document E203™–2013, Building Information Modeling and Digital Data Exhibit, if completed, or as otherwise set forth below:

*(If other than in accordance with AIA Document E203–2013, insert requirements for delivering notice in electronic format such as name, title, and email address of the recipient and whether and how the system will be required to generate a read receipt for the transmission.)*

**§ 14.5** Other provisions:

**ARTICLE 15 SCOPE OF THE AGREEMENT**

**§ 15.1** This Agreement represents the entire and integrated agreement between the Owner and the Construction Manager and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Construction Manager.

**§ 15.2** The following documents comprise the Agreement:

.1 AIA Document A133™–2019, Standard Form of Agreement Between Owner and Construction Manager as Constructor where the basis of payment is the Cost of the Work Plus a Fee with a Guaranteed Maximum Price

.2 AIA Document A133™–2019, Exhibit A, Guaranteed Maximum Price Amendment, if executed

.3

AIA Document A201™–2017, General Conditions of the Contract for Construction

*(Paragraph Deleted)*

.4 Broomfield Standard and Specs and General Conditions.

.5 Other Exhibits:

*(Paragraph Deleted)*

(

*(Paragraphs Deleted)*

Document	Title	Date	Pages
None			

.6 Other documents, if any, listed below:

*(List here any additional documents that are intended to form part of the Contract Documents. AIA Document A201–2017 provides that the advertisement or invitation to bid, Instructions to Bidders, sample forms, the Construction Manager’s bid or proposal, portions of Addenda relating to bidding*



*or proposal requirements, and other information furnished by the Owner in anticipation of receiving bids or proposals, are not part of the Contract Documents unless enumerated in this Agreement. Any such documents should be listed here only if intended to be part of the Contract Documents.)*

none

This Agreement is entered into as of the day and year first written above.

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

\_\_\_\_\_  
(Printed name and title)

  
\_\_\_\_\_  
CONSTRUCTION MANAGER (Signature)

*Brent J Tucker* *Division Manager*  
\_\_\_\_\_  
(Printed name and title)

# **AIA**® Document A201® – 2017

## **General Conditions of the Contract for Construction**

**for the following PROJECT:**

*(Name and location or address)*

Sunridge Lift Station  
Broomfield Colorado

**THE OWNER:**

*(Name, legal status and address)*

City and County of Broomfield , Colorado Municipal Corporation and County  
One DesCombes Drive, Broomfield CO 80020

**THE ARCHITECT:**

*(Name, legal status and address)*

Burns & McDonnell

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- 14 TERMINATION OR SUSPENSION OF THE CONTRACT**
- 15 CLAIMS AND DISPUTES**

**ADDITIONS AND DELETIONS:**

The author of this document has added information needed for its completion. The author may also have revised the text of the original AIA standard form. An *Additions and Deletions Report* that notes added information as well as revisions to the standard form text is available from the author and should be reviewed. A vertical line in the left margin of this document indicates where the author has added necessary information and where the author has added to or deleted from the original AIA text.

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

For guidance in modifying this document to include supplementary conditions, see AIA Document A503™, Guide for Supplementary Conditions.

Init.

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## **ARTICLE 1 GENERAL PROVISIONS**

### **§ 1.1 Basic Definitions**

#### **§ 1.1.1 The Contract Documents**

The Contract Documents are enumerated in the Agreement between the Owner and Contractor (hereinafter the Agreement) and consist of the Agreement, Conditions of the Contract (General, Supplementary and other Conditions), Drawings, Specifications, Addenda issued prior to execution of the Contract, other documents listed in the Agreement, and Modifications issued after execution of the Contract. A Modification is (1) a written amendment to the Contract signed by both parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written order for a minor change in the Work issued by the Architect. Unless specifically enumerated in the Agreement, the Contract Documents do not include the advertisement or invitation to bid, Instructions to Bidders, sample forms, other information furnished by the Owner in anticipation of receiving bids or proposals, the Contractor's bid or proposal, or portions of Addenda relating to bidding or proposal requirements.

#### **§ 1.1.2 The Contract**

The Contract Documents form the Contract for Construction. The Contract represents the entire and integrated agreement between the parties hereto and supersedes prior negotiations, representations, or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Contract Documents shall not be construed to create a contractual relationship of any kind (1) between the Contractor and the Architect or the Architect's consultants, (2) between the Owner and a Subcontractor or a Sub-subcontractor, (3) between the Owner and the Architect or the Architect's consultants, or (4) between any persons or entities other than the Owner and the Contractor.

#### **§ 1.1.3 The Work**

The term "Work" means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment, and services provided or to be provided by the Contractor to fulfill the Contractor's obligations. The Work may constitute the whole or a part of the Project.

#### **§ 1.1.4 The Project**

The Project is the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner and by Separate Contractors.

#### **§ 1.1.5 The Drawings**

The Drawings are the graphic and pictorial portions of the Contract Documents showing the design, location and dimensions of the Work, generally including plans, elevations, sections, details, schedules, and diagrams.

#### **§ 1.1.6 The Specifications**

The Specifications are that portion of the Contract Documents consisting of the written requirements for materials, equipment, systems, standards and workmanship for the Work, and performance of related services.

#### **§ 1.1.7 Instruments of Service**

Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Architect and the Architect's consultants under their respective professional services agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, preliminary design reports and other similar materials.

#### **§ 1.1.8 Initial Decision Maker**

The Initial Decision Maker is the person identified in the Agreement to render initial decisions on Claims in accordance with Section 15.2. The Initial Decision Maker shall not show partiality to the Owner or Contractor and shall not be liable for results of interpretations or decisions rendered in good faith.

### **§ 1.2 Correlation and Intent of the Contract Documents**

**§ 1.2.1** The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably inferable from them as being necessary to produce the indicated results.

**§ 1.2.1.1** The invalidity of any provision of the Contract Documents shall not invalidate the Contract or its remaining provisions. If it is determined that any provision of the Contract Documents violates any law, or is otherwise invalid or unenforceable, then that provision shall be revised to the extent necessary to make that provision legal and enforceable. In such case the Contract Documents shall be construed, to the fullest extent permitted by law, to give effect to the parties' intentions and purposes in executing the Contract.

**§ 1.2.2** Organization of the Specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

**§ 1.2.3** Unless otherwise stated in the Contract Documents, words that have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

### **§ 1.3 Capitalization**

Terms capitalized in these General Conditions include those that are (1) specifically defined, (2) the titles of numbered articles, or (3) the titles of other documents published by the American Institute of Architects.

### **§ 1.4 Interpretation**

In the interest of brevity the Contract Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

### **§ 1.5 Ownership and Use of Drawings, Specifications, and Other Instruments of Service**

**§ 1.5.1** The Architect and the Architect's consultants shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and retain all common law, statutory, and other reserved rights in their Instruments of Service, including copyrights. The Contractor, Subcontractors, Sub-subcontractors, and suppliers shall not own or claim a copyright in the Instruments of Service. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Architect's or Architect's consultants' reserved rights.

**§ 1.5.2** The Contractor, Subcontractors, Sub-subcontractors, and suppliers are authorized to use and reproduce the Instruments of Service provided to them, subject to any protocols established pursuant to Sections 1.7 and 1.8, solely and exclusively for execution of the Work. All copies made under this authorization shall bear the copyright notice, if any, shown on the Instruments of Service. The Contractor, Subcontractors, Sub-subcontractors, and suppliers may not use the Instruments of Service on other projects or for additions to the Project outside the scope of the Work without the specific written consent of the Owner, Architect, and the Architect's consultants.

### **§ 1.6 Notice**

**§ 1.6.1** Except as otherwise provided in Section 1.6.2, where the Contract Documents require one party to notify or give notice to the other party, such notice shall be provided in writing to the designated representative of the party to whom the notice is addressed and shall be deemed to have been duly served if delivered in person, by mail, by courier, or by electronic transmission if a method for electronic transmission is set forth in the Agreement.

**§ 1.6.2** Notice of Claims as provided in Section 15.1.3 shall be provided in writing and shall be deemed to have been duly served only if delivered to the designated representative of the party to whom the notice is addressed by certified or registered mail, or by courier providing proof of delivery.

*(Paragraphs Deleted)*

## **ARTICLE 2 OWNER**

### **§ 2.1 General**

**§ 2.1.1** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Owner shall designate in writing a representative who shall have

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express authority to bind the Owner with respect to all matters requiring the Owner's approval or authorization. Except as otherwise provided in Section 4.2.1, the Architect does not have such authority. The term "Owner" means the Owner or the Owner's authorized representative.

**§ 2.1.2** The Owner shall furnish to the Contractor, within fifteen days after receipt of a written request, information necessary and relevant for the Contractor to evaluate, give notice of, or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

## **§ 2.2 Evidence of the Owner's Financial Arrangements**

**§ 2.2.1** Prior to commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract. The Contractor shall have no obligation to commence the Work until the Owner provides such evidence. If commencement of the Work is delayed under this Section 2.2.1, the Contract Time shall be extended appropriately.

**§ 2.2.2** Following commencement of the Work and upon written request by the Contractor, the Owner shall furnish to the Contractor reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Contract only if (1) the Owner fails to make payments to the Contractor as the Contract Documents require; (2) the Contractor identifies in writing a reasonable concern regarding the Owner's ability to make payment when due; or (3) a change in the Work materially changes the Contract Sum. If the Owner fails to provide such evidence, as required, within fourteen days of the Contractor's request, the Contractor may immediately stop the Work and, in that event, shall notify the Owner that the Work has stopped. However, if the request is made because a change in the Work materially changes the Contract Sum under (3) above, the Contractor may immediately stop only that portion of the Work affected by the change until reasonable evidence is provided. If the Work is stopped under this Section 2.2.2, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided in the Contract Documents.

**§ 2.2.3** After the Owner furnishes evidence of financial arrangements under this Section 2.2, the Owner shall not materially vary such financial arrangements without prior notice to the Contractor.

**§ 2.2.4** Where the Owner has designated information furnished under this Section 2.2 as "confidential," the Contractor shall keep the information confidential and shall not disclose it to any other person. However, the Contractor may disclose "confidential" information, after seven (7) days' notice to the Owner, where disclosure is required by law, including a subpoena or other form of compulsory legal process issued by a court or governmental entity, or by court or arbitrator(s) order. The Contractor may also disclose "confidential" information to its employees, consultants, sureties, Subcontractors and their employees, Sub-subcontractors, and others who need to know the content of such information solely and exclusively for the Project and who agree to maintain the confidentiality of such information.

## **§ 2.3 Information and Services Required of the Owner**

**§ 2.3.1** Except for permits and fees that are the responsibility of the Contractor under the Contract Documents, including those required under Section 3.7.1, the Owner shall secure and pay for necessary approvals, easements, assessments and charges required for construction, use or occupancy of permanent structures or for permanent changes in existing facilities.

**§ 2.3.2** The Owner shall retain an architect lawfully licensed to practice architecture, or an entity lawfully practicing architecture, in the jurisdiction where the Project is located. That person or entity is identified as the Architect in the Agreement and is referred to throughout the Contract Documents as if singular in number.

**§ 2.3.3** If the employment of the Architect terminates, the Owner shall employ a successor to whom the Contractor has no reasonable objection and whose status under the Contract Documents shall be that of the Architect.

**§ 2.3.4** The Owner shall furnish surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site. The Contractor shall be entitled to rely on the accuracy of

information furnished by the Owner but shall exercise proper precautions relating to the safe performance of the Work.

**§ 2.3.5** The Owner shall furnish information or services required of the Owner by the Contract Documents with reasonable promptness. The Owner shall also furnish any other information or services under the Owner's control and relevant to the Contractor's performance of the Work with reasonable promptness after receiving the Contractor's written request for such information or services.

**§ 2.3.6** Unless otherwise provided in the Contract Documents, the Owner shall furnish to the Contractor one copy of the Contract Documents for purposes of making reproductions pursuant to Section 1.5.2.

#### **§ 2.4 Owner's Right to Stop the Work**

If the Contractor fails to correct Work that is not in accordance with the requirements of the Contract Documents as required by Section 12.2 or repeatedly fails to carry out Work in accordance with the Contract Documents, the Owner may issue a written order to the Contractor to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Contractor or any other person or entity, except to the extent required by Section 6.1.3.

#### **§ 2.5 Owner's Right to Carry Out the Work**

If the Contractor defaults or neglects to carry out the Work in accordance with the Contract Documents and fails within a ten-day period after receipt of notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such default or neglect. Such action by the Owner and amounts charged to the Contractor are both subject to prior approval of the Architect and the Architect may, pursuant to Section 9.5.1, withhold or nullify a Certificate for Payment in whole or in part, to the extent reasonably necessary to reimburse the Owner for the reasonable cost of correcting such deficiencies, including Owner's expenses and compensation for the Architect's additional services made necessary by such default, neglect, or failure. If current and future payments are not sufficient to cover such amounts, the Contractor shall pay the difference to the Owner. If the Contractor disagrees with the actions of the Owner or the Architect, or the amounts claimed as costs to the Owner, the Contractor may file a Claim pursuant to Article 15.

### **ARTICLE 3 CONTRACTOR**

#### **§ 3.1 General**

**§ 3.1.1** The Contractor is the person or entity identified as such in the Agreement and is referred to throughout the Contract Documents as if singular in number. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor shall designate in writing a representative who shall have express authority to bind the Contractor with respect to all matters under this Contract. The term "Contractor" means the Contractor or the Contractor's authorized representative.

**§ 3.1.2** The Contractor shall perform the Work in accordance with the Contract Documents.

**§ 3.1.3** The Contractor shall not be relieved of its obligations to perform the Work in accordance with the Contract Documents either by activities or duties of the Architect in the Architect's administration of the Contract, or by tests, inspections or approvals required or performed by persons or entities other than the Contractor.

#### **§ 3.2 Review of Contract Documents and Field Conditions by Contractor**

**§ 3.2.1** Execution of the Contract by the Contractor is a representation that the Contractor has visited the site, become generally familiar with local conditions under which the Work is to be performed, and correlated personal observations with requirements of the Contract Documents.

**§ 3.2.2** Because the Contract Documents are complementary, the Contractor shall, before starting each portion of the Work, carefully study and compare the various Contract Documents relative to that portion of the Work, as well as the information furnished by the Owner pursuant to Section 2.3.4, shall take field measurements of any existing conditions related to that portion of the Work, and shall observe any conditions at the site affecting it. These obligations are for the purpose of facilitating coordination and construction by the Contractor and are not for the purpose of discovering errors, omissions, or inconsistencies in the Contract Documents; however, the Contractor

shall promptly report to the Architect any errors, inconsistencies or omissions discovered by or made known to the Contractor as a request for information in such form as the Architect may require. It is recognized that the Contractor's review is made in the Contractor's capacity as a contractor and not as a licensed design professional, unless otherwise specifically provided in the Contract Documents.

**§ 3.2.3** The Contractor is not required to ascertain that the Contract Documents are in accordance with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, but the Contractor shall promptly report to the Architect any nonconformity discovered by or made known to the Contractor as a request for information in such form as the Architect may require.

**§ 3.2.4** If the Contractor believes that additional cost or time is involved because of clarifications or instructions the Architect issues in response to the Contractor's notices or requests for information pursuant to Sections 3.2.2 or 3.2.3, the Contractor shall submit Claims as provided in Article 15. If the Contractor fails to perform the obligations of Sections 3.2.2 or 3.2.3, the Contractor shall pay such costs and damages to the Owner, subject to Section 15.1.7, as would have been avoided if the Contractor had performed such obligations. If the Contractor performs those obligations, the Contractor shall not be liable to the Owner or Architect for damages resulting from errors, inconsistencies or omissions in the Contract Documents, for differences between field measurements or conditions and the Contract Documents, or for nonconformities of the Contract Documents to applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities.

### **§ 3.3 Supervision and Construction Procedures**

**§ 3.3.1** The Contractor shall supervise and direct the Work, using the Contractor's best skill and attention. The Contractor shall be solely responsible for, and have control over, construction means, methods, techniques, sequences, and procedures, and for coordinating all portions of the Work under the Contract. If the Contract Documents give specific instructions concerning construction means, methods, techniques, sequences, or procedures, the Contractor shall evaluate the jobsite safety thereof and shall be solely responsible for the jobsite safety of such means, methods, techniques, sequences, or procedures. If the Contractor determines that such means, methods, techniques, sequences or procedures may not be safe, the Contractor shall give timely notice to the Owner and Architect, and shall propose alternative means, methods, techniques, sequences, or procedures. The Architect shall evaluate the proposed alternative solely for conformance with the design intent for the completed construction. Unless the Architect objects to the Contractor's proposed alternative, the Contractor shall perform the Work using its alternative means, methods, techniques, sequences, or procedures.

**§ 3.3.2** The Contractor shall be responsible to the Owner for acts and omissions of the Contractor's employees, Subcontractors and their agents and employees, and other persons or entities performing portions of the Work for, or on behalf of, the Contractor or any of its Subcontractors.

**§ 3.3.3** The Contractor shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

### **§ 3.4 Labor and Materials**

**§ 3.4.1** Unless otherwise provided in the Contract Documents, the Contractor shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services necessary for proper execution and completion of the Work, whether temporary or permanent and whether or not incorporated or to be incorporated in the Work.

**§ 3.4.2** Except in the case of minor changes in the Work approved by the Architect in accordance with Section 3.12.8 or ordered by the Architect in accordance with Section 7.4, the Contractor may make substitutions only with the consent of the Owner, after evaluation by the Architect and in accordance with a Change Order or Construction Change Directive.

**§ 3.4.3** The Contractor shall enforce strict discipline and good order among the Contractor's employees and other persons carrying out the Work. The Contractor shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

### **§ 3.5 Warranty**

**§ 3.5.1** The Contractor warrants to the Owner and Architect that materials and equipment furnished under the Contract will be of good quality and new unless the Contract Documents require or permit otherwise. The Contractor further warrants that the Work will conform to the requirements of the Contract Documents and will be free from defects, except for those inherent in the quality of the Work the Contract Documents require or permit. Work, materials, or equipment not conforming to these requirements may be considered defective. The Contractor's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Contractor, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Architect, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

**§ 3.5.2** All material, equipment, or other special warranties required by the Contract Documents shall be issued in the name of the Owner, or shall be transferable to the Owner, and shall commence in accordance with Section 9.8.4.

### **§ 3.6 Taxes**

The Contractor shall pay sales, consumer, use and similar taxes for the Work provided by the Contractor that are legally enacted when bids are received or negotiations concluded, whether or not yet effective or merely scheduled to go into effect.

The Owner is eligible for sales, consumer, and use tax exemption. The Contractor shall apply to the State Revenue Department for an exemption certificate in order to exempt Contractor from paying sales, consumer, or use tax but shall be responsible for the filing of City use tax forms

### **§ 3.7 Permits, Fees, Notices and Compliance with Laws**

**§ 3.7.1** Unless otherwise provided in the Contract Documents, the Contractor shall secure and pay for the building permit as well as for other permits, fees, licenses, and inspections by government agencies necessary for proper execution and completion of the Work that are customarily secured after execution of the Contract and legally required at the time bids are received or negotiations concluded.

**§ 3.7.2** The Contractor shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities applicable to performance of the Work.

**§ 3.7.3** If the Contractor performs Work knowing it to be contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Contractor shall assume appropriate responsibility for such Work and shall bear the costs attributable to correction.

### **§ 3.7.4 Concealed or Unknown Conditions**

If the Contractor encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Contract Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Contract Documents, the Contractor shall promptly provide notice to the Owner and the Architect before conditions are disturbed and in no event later than 14 days after first observance of the conditions. The Architect will promptly investigate such conditions and, if the Architect determines that they differ materially and cause an increase or decrease in the Contractor's cost of, or time required for, performance of any part of the Work, will recommend that an equitable adjustment be made in the Contract Sum or Contract Time, or both. If the Architect determines that the conditions at the site are not materially different from those indicated in the Contract Documents and that no change in the terms of the Contract is justified, the Architect shall promptly notify the Owner and Contractor, stating the reasons. If either party disputes the Architect's determination or recommendation, that party may submit a Claim as provided in Article 15.

**§ 3.7.5** If, in the course of the Work, the Contractor encounters human remains or recognizes the existence of burial markers, archaeological sites or wetlands not indicated in the Contract Documents, the Contractor shall immediately suspend any operations that would affect them and shall notify the Owner and Architect. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Contractor shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 15.

### **§ 3.8 Allowances**

**§ 3.8.1** The Contractor shall include in the Contract Sum all allowances stated in the Contract Documents. Items covered by allowances shall be supplied for such amounts and by such persons or entities as the Owner may direct, but the Contractor shall not be required to employ persons or entities to whom the Contractor has reasonable objection.

**§ 3.8.2** Unless otherwise provided in the Contract Documents,

- .1 allowances shall cover the cost to the Contractor of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 Contractor's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 3.8.2.1 and (2) changes in Contractor's costs under Section 3.8.2.2.

**§ 3.8.3** Materials and equipment under an allowance shall be selected by the Owner with reasonable promptness.

### **§ 3.9 Superintendent**

**§ 3.9.1** The Contractor shall employ a competent superintendent and necessary assistants who shall be in attendance at the Project site during performance of the Work. The superintendent shall represent the Contractor, and communications given to the superintendent shall be as binding as if given to the Contractor.

**§ 3.9.2** The Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the name and qualifications of a proposed superintendent. Within 14 days of receipt of the information, the Architect may notify the Contractor, stating whether the Owner or the Architect (1) has reasonable objection to the proposed superintendent or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 3.9.3** The Contractor shall not employ a proposed superintendent to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not change the superintendent without the Owner's consent, which shall not unreasonably be withheld or delayed.

### **§ 3.10 Contractor's Construction and Submittal Schedules**

**§ 3.10.1** The Contractor, promptly after being awarded the Contract, shall submit for the Owner's and Architect's information a Contractor's construction schedule for the Work. The schedule shall contain detail appropriate for the Project, including (1) the date of commencement of the Work, interim schedule milestone dates, and the date of Substantial Completion; (2) an apportionment of the Work by construction activity; and (3) the time required for completion of each portion of the Work. The schedule shall provide for the orderly progression of the Work to completion and shall not exceed time limits current under the Contract Documents. The schedule shall be revised at appropriate intervals as required by the conditions of the Work and Project.

**§ 3.10.2** The Contractor, promptly after being awarded the Contract and thereafter as necessary to maintain a current submittal schedule, shall submit a submittal schedule for the Architect's approval. The Architect's approval shall not be unreasonably delayed or withheld. The submittal schedule shall (1) be coordinated with the Contractor's construction schedule, and (2) allow the Architect reasonable time to review submittals. If the Contractor fails to submit a submittal schedule, or fails to provide submittals in accordance with the approved submittal schedule, the Contractor shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of submittals.

**§ 3.10.3** The Contractor shall perform the Work in general accordance with the most recent schedules submitted to the Owner and Architect.



### **§ 3.11 Documents and Samples at the Site**

The Contractor shall make available, at the Project site, the Contract Documents, including Change Orders, Construction Change Directives, and other Modifications, in good order and marked currently to indicate field changes and selections made during construction, and the approved Shop Drawings, Product Data, Samples, and similar required submittals. These shall be in electronic form or paper copy, available to the Architect and Owner, and delivered to the Architect for submittal to the Owner upon completion of the Work as a record of the Work as constructed.

### **§ 3.12 Shop Drawings, Product Data and Samples**

**§ 3.12.1** Shop Drawings are drawings, diagrams, schedules, and other data specially prepared for the Work by the Contractor or a Subcontractor, Sub-subcontractor, manufacturer, supplier, or distributor to illustrate some portion of the Work.

**§ 3.12.2** Product Data are illustrations, standard schedules, performance charts, instructions, brochures, diagrams, and other information furnished by the Contractor to illustrate materials or equipment for some portion of the Work.

**§ 3.12.3** Samples are physical examples that illustrate materials, equipment, or workmanship, and establish standards by which the Work will be judged.

**§ 3.12.4** Shop Drawings, Product Data, Samples, and similar submittals are not Contract Documents. Their purpose is to demonstrate how the Contractor proposes to conform to the information given and the design concept expressed in the Contract Documents for those portions of the Work for which the Contract Documents require submittals. Review by the Architect is subject to the limitations of Section 4.2.7. Informational submittals upon which the Architect is not expected to take responsive action may be so identified in the Contract Documents. Submittals that are not required by the Contract Documents may be returned by the Architect without action.

**§ 3.12.5** The Contractor shall review for compliance with the Contract Documents, approve, and submit to the Architect, Shop Drawings, Product Data, Samples, and similar submittals required by the Contract Documents, in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness and in such sequence as to cause no delay in the Work or in the activities of the Owner or of Separate Contractors.

**§ 3.12.6** By submitting Shop Drawings, Product Data, Samples, and similar submittals, the Contractor represents to the Owner and Architect that the Contractor has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so, and (3) checked and coordinated the information contained within such submittals with the requirements of the Work and of the Contract Documents.

**§ 3.12.7** The Contractor shall perform no portion of the Work for which the Contract Documents require submittal and review of Shop Drawings, Product Data, Samples, or similar submittals, until the respective submittal has been approved by the Architect.

**§ 3.12.8** The Work shall be in accordance with approved submittals except that the Contractor shall not be relieved of responsibility for deviations from the requirements of the Contract Documents by the Architect's approval of Shop Drawings, Product Data, Samples, or similar submittals, unless the Contractor has specifically notified the Architect of such deviation at the time of submittal and (1) the Architect has given written approval to the specific deviation as a minor change in the Work, or (2) a Change Order or Construction Change Directive has been issued authorizing the deviation. The Contractor shall not be relieved of responsibility for errors or omissions in Shop Drawings, Product Data, Samples, or similar submittals, by the Architect's approval thereof.

**§ 3.12.9** The Contractor shall direct specific attention, in writing or on resubmitted Shop Drawings, Product Data, Samples, or similar submittals, to revisions other than those requested by the Architect on previous submittals. In the absence of such notice, the Architect's approval of a resubmission shall not apply to such revisions.

**§ 3.12.10** The Contractor shall not be required to provide professional services that constitute the practice of architecture or engineering unless such services are specifically required by the Contract Documents for a portion of the Work or unless the Contractor needs to provide such services in order to carry out the Contractor's

responsibilities for construction means, methods, techniques, sequences, and procedures. The Contractor shall not be required to provide professional services in violation of applicable law.

**§ 3.12.10.1** If professional design services or certifications by a design professional related to systems, materials, or equipment are specifically required of the Contractor by the Contract Documents, the Owner and the Architect will specify all performance and design criteria that such services must satisfy. The Contractor shall be entitled to rely upon the adequacy and accuracy of the performance and design criteria provided in the Contract Documents. The Contractor shall cause such services or certifications to be provided by an appropriately licensed design professional, whose signature and seal shall appear on all drawings, calculations, specifications, certifications, Shop Drawings, and other submittals prepared by such professional. Shop Drawings, and other submittals related to the Work, designed or certified by such professional, if prepared by others, shall bear such professional's written approval when submitted to the Architect. The Owner and the Architect shall be entitled to rely upon the adequacy and accuracy of the services, certifications, and approvals performed or provided by such design professionals, provided the Owner and Architect have specified to the Contractor the performance and design criteria that such services must satisfy. Pursuant to this Section 3.12.10, the Architect will review and approve or take other appropriate action on submittals only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents.

**§ 3.12.10.2** If the Contract Documents require the Contractor's design professional to certify that the Work has been performed in accordance with the design criteria, the Contractor shall furnish such certifications to the Architect at the time and in the form specified by the Architect.

### **§ 3.13 Use of Site**

The Contractor shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Contract Documents and shall not unreasonably encumber the site with materials or equipment.

### **§ 3.14 Cutting and Patching**

**§ 3.14.1** The Contractor shall be responsible for cutting, fitting, or patching required to complete the Work or to make its parts fit together properly. All areas requiring cutting, fitting, or patching shall be restored to the condition existing prior to the cutting, fitting, or patching, unless otherwise required by the Contract Documents.

**§ 3.14.2** The Contractor shall not damage or endanger a portion of the Work or fully or partially completed construction of the Owner or Separate Contractors by cutting, patching, or otherwise altering such construction, or by excavation. The Contractor shall not cut or otherwise alter construction by the Owner or a Separate Contractor except with written consent of the Owner and of the Separate Contractor. Consent shall not be unreasonably withheld. The Contractor shall not unreasonably withhold, from the Owner or a Separate Contractor, its consent to cutting or otherwise altering the Work.

### **§ 3.15 Cleaning Up**

**§ 3.15.1** The Contractor shall keep the premises and surrounding area free from accumulation of waste materials and rubbish caused by operations under the Contract. At completion of the Work, the Contractor shall remove waste materials, rubbish, the Contractor's tools, construction equipment, machinery, and surplus materials from and about the Project.

**§ 3.15.2** If the Contractor fails to clean up as provided in the Contract Documents, the Owner may do so and the Owner shall be entitled to reimbursement from the Contractor.

### **§ 3.16 Access to Work**

The Contractor shall provide the Owner and Architect with access to the Work in preparation and progress wherever located.

### **§ 3.17 Royalties, Patents and Copyrights**

The Contractor shall pay all royalties and license fees. The Contractor shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and Architect harmless from loss on account thereof, but shall not be responsible for defense or loss when a particular design, process, or product of a particular manufacturer or manufacturers is required by the Contract Documents, or where the copyright violations are contained in

Drawings, Specifications, or other documents prepared by the Owner or Architect. However, if an infringement of a copyright or patent is discovered by, or made known to, the Contractor, the Contractor shall be responsible for the loss unless the information is promptly furnished to the Architect.

### **§ 3.18 Indemnification**

**§ 3.18.1** To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

**§ 3.18.2** In claims against any person or entity indemnified under this Section 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, the indemnification obligation under Section 3.18.1 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts, or other employee benefit acts.

## **ARTICLE 4 ARCHITECT**

### **§ 4.1 General**

**§ 4.1.1** The Architect is the person or entity retained by the Owner pursuant to Section 2.3.2 and identified as such in the Agreement.

**§ 4.1.2** Duties, responsibilities, and limitations of authority of the Architect as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of the Owner, Contractor, and Architect. Consent shall not be unreasonably withheld.

### **§ 4.2 Administration of the Contract**

**§ 4.2.1** The Architect will provide assistance with administration of the Contract as described in the Contract Documents and will assist the Owner during construction as requested by the Owner until the date the final Certificate for Payment is issued. The Architect will have authority to act on behalf of the Owner only to the extent provided in the Contract Documents.

**§ 4.2.2** The Architect will visit the site at intervals appropriate to the stage of construction, or as otherwise agreed with the Owner, to become generally familiar with the progress and quality of the portion of the Work completed, and to determine in general if the Work observed is being performed in a manner indicating that the Work, when fully completed, will be in accordance with the Contract Documents. However, the Architect will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. The Architect will not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, since these are solely the Contractor's rights and responsibilities under the Contract Documents.

**§ 4.2.3** On the basis of the site visits, the Architect will keep the Owner reasonably informed about the progress and quality of the portion of the Work completed, and promptly report to the Owner (1) known deviations from the Contract Documents, (2) known deviations from the most recent construction schedule submitted by the Contractor, and (3) defects and deficiencies observed in the Work. The Architect will not be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents. The Architect will not have control over or charge of, and will not be responsible for acts or omissions of, the Contractor, Subcontractors, or their agents or employees, or any other persons or entities performing portions of the Work.

### **§ 4.2.4 Communications**

The Owner and Contractor shall include the Architect in all communications that relate to or affect the Architect's services or professional responsibilities. The Owner shall promptly notify the Architect of the substance of any

direct communications between the Owner and the Contractor otherwise relating to the Project. Communications by and with the Architect's consultants shall be through the Architect. Communications by and with Subcontractors and suppliers shall be through the Contractor. Communications by and with Separate Contractors shall be through the Owner. The Contract Documents may specify other communication protocols.

**§ 4.2.5** Based on the Architect's evaluations of the Contractor's Applications for Payment, the Architect will review and certify the amounts due the Contractor and will issue Certificates for Payment in such amounts.

**§ 4.2.6** The Architect has authority to reject Work that does not conform to the Contract Documents. Whenever the Architect considers it necessary or advisable, the Architect will have authority to require inspection or testing of the Work in accordance with Sections 13.4.2 and 13.4.3, whether or not the Work is fabricated, installed or completed. However, neither this authority of the Architect nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Architect to the Contractor, Subcontractors, suppliers, their agents or employees, or other persons or entities performing portions of the Work.

**§ 4.2.7** The Architect will review and approve, or take other appropriate action upon, the Contractor's submittals such as Shop Drawings, Product Data, and Samples, but only for the limited purpose of checking for conformance with information given and the design concept expressed in the Contract Documents. The Architect's action will be taken in accordance with the submittal schedule approved by the Architect or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Architect's professional judgment to permit adequate review. Review of such submittals is not conducted for the purpose of determining the accuracy and completeness of other details such as dimensions and quantities, or for substantiating instructions for installation or performance of equipment or systems, all of which remain the responsibility of the Contractor as required by the Contract Documents. The Architect's review of the Contractor's submittals shall not relieve the Contractor of the obligations under Sections 3.3, 3.5, and 3.12. The Architect's review shall not constitute approval of safety precautions or of any construction means, methods, techniques, sequences, or procedures. The Architect's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

**§ 4.2.8** The Architect will prepare Change Orders and Construction Change Directives, and may order minor changes in the Work as provided in Section 7.4. The Architect will investigate and make determinations and recommendations regarding concealed and unknown conditions as provided in Section 3.7.4.

**§ 4.2.9** The Architect will conduct inspections to determine the date or dates of Substantial Completion and the date of final completion; issue Certificates of Substantial Completion pursuant to Section 9.8; receive and forward to the Owner, for the Owner's review and records, written warranties and related documents required by the Contract and assembled by the Contractor pursuant to Section 9.10; and issue a final Certificate for Payment pursuant to Section 9.10.

**§ 4.2.10** If the Owner and Architect agree, the Architect will provide one or more Project representatives to assist in carrying out the Architect's responsibilities at the site. The Owner shall notify the Contractor of any change in the duties, responsibilities and limitations of authority of the Project representatives.

**§ 4.2.11** The Architect will interpret and decide matters concerning performance under, and requirements of, the Contract Documents on written request of either the Owner or Contractor. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with reasonable promptness.

**§ 4.2.12** Interpretations and decisions of the Architect will be consistent with the intent of, and reasonably inferable from, the Contract Documents and will be in writing or in the form of drawings. When making such interpretations and decisions, the Architect will endeavor to secure faithful performance by both Owner and Contractor, will not show partiality to either, and will not be liable for results of interpretations or decisions rendered in good faith.

**§ 4.2.13** The Architect's decisions on matters relating to aesthetic effect will be final if consistent with the intent expressed in the Contract Documents.

**§ 4.2.14** The Architect will review and respond to requests for information about the Contract Documents. The Architect's response to such requests will be made in writing within any time limits agreed upon or otherwise with

reasonable promptness. If appropriate, the Architect will prepare and issue supplemental Drawings and Specifications in response to the requests for information.

## **ARTICLE 5 SUBCONTRACTORS**

### **§ 5.1 Definitions**

**§ 5.1.1** A Subcontractor is a person or entity who has a direct contract with the Contractor to perform a portion of the Work at the site. The term "Subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Subcontractor or an authorized representative of the Subcontractor. The term "Subcontractor" does not include a Separate Contractor or the subcontractors of a Separate Contractor.

**§ 5.1.2** A Sub-subcontractor is a person or entity who has a direct or indirect contract with a Subcontractor to perform a portion of the Work at the site. The term "Sub-subcontractor" is referred to throughout the Contract Documents as if singular in number and means a Sub-subcontractor or an authorized representative of the Sub-subcontractor.

### **§ 5.2 Award of Subcontracts and Other Contracts for Portions of the Work**

**§ 5.2.1** Unless otherwise stated in the Contract Documents, the Contractor, as soon as practicable after award of the Contract, shall notify the Owner and Architect of the persons or entities proposed for each principal portion of the Work, including those who are to furnish materials or equipment fabricated to a special design. Within 14 days of receipt of the information, the Architect may notify the Contractor whether the Owner or the Architect (1) has reasonable objection to any such proposed person or entity or (2) requires additional time for review. Failure of the Architect to provide notice within the 14-day period shall constitute notice of no reasonable objection.

**§ 5.2.2** The Contractor shall not contract with a proposed person or entity to whom the Owner or Architect has made reasonable and timely objection. The Contractor shall not be required to contract with anyone to whom the Contractor has made reasonable objection.

**§ 5.2.3** If the Owner or Architect has reasonable objection to a person or entity proposed by the Contractor, the Contractor shall propose another to whom the Owner or Architect has no reasonable objection. If the proposed but rejected Subcontractor was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute Subcontractor's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Contractor has acted promptly and responsively in submitting names as required.

**§ 5.2.4** The Contractor shall not substitute a Subcontractor, person, or entity for one previously selected if the Owner or Architect makes reasonable objection to such substitution.

### **§ 5.3 Subcontractual Relations**

By appropriate written agreement, the Contractor shall require each Subcontractor, to the extent of the Work to be performed by the Subcontractor, to be bound to the Contractor by terms of the Contract Documents, and to assume toward the Contractor all the obligations and responsibilities, including the responsibility for safety of the Subcontractor's Work that the Contractor, by these Contract Documents, assumes toward the Owner and Architect. Each subcontract agreement shall preserve and protect the rights of the Owner and Architect under the Contract Documents with respect to the Work to be performed by the Subcontractor so that subcontracting thereof will not prejudice such rights, and shall allow to the Subcontractor, unless specifically provided otherwise in the subcontract agreement, the benefit of all rights, remedies, and redress against the Contractor that the Contractor, by the Contract Documents, has against the Owner. Where appropriate, the Contractor shall require each Subcontractor to enter into similar agreements with Sub-subcontractors. The Contractor shall make available to each proposed Subcontractor, prior to the execution of the subcontract agreement, copies of the Contract Documents to which the Subcontractor will be bound, and, upon written request of the Subcontractor, identify to the Subcontractor terms and conditions of the proposed subcontract agreement that may be at variance with the Contract Documents. Subcontractors will similarly make copies of applicable portions of such documents available to their respective proposed Sub-subcontractors.

#### **§ 5.4 Contingent Assignment of Subcontracts**

**§ 5.4.1** Each subcontract agreement for a portion of the Work is assigned by the Contractor to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause pursuant to Section 14.2 and only for those subcontract agreements that the Owner accepts by notifying the Subcontractor and Contractor; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of a subcontract agreement, the Owner assumes the Contractor's rights and obligations under the subcontract.

**§ 5.4.2** Upon such assignment, if the Work has been suspended for more than 30 days, the Subcontractor's compensation shall be equitably adjusted for increases in cost resulting from the suspension.

**§ 5.4.3** Upon assignment to the Owner under this Section 5.4, the Owner may further assign the subcontract to a successor contractor or other entity. If the Owner assigns the subcontract to a successor contractor or other entity, the Owner shall nevertheless remain legally responsible for all of the successor contractor's obligations under the subcontract.

#### **ARTICLE 6 CONSTRUCTION BY OWNER OR BY SEPARATE CONTRACTORS**

##### **§ 6.1 Owner's Right to Perform Construction and to Award Separate Contracts**

**§ 6.1.1** The term "Separate Contractor(s)" shall mean other contractors retained by the Owner under separate agreements. The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces, and with Separate Contractors retained under Conditions of the Contract substantially similar to those of this Contract, including those provisions of the Conditions of the Contract related to insurance and waiver of subrogation.

**§ 6.1.2** When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Contractor" in the Contract Documents in each case shall mean the Contractor who executes each separate Owner-Contractor Agreement.

**§ 6.1.3** The Owner shall provide for coordination of the activities of the Owner's own forces and of each Separate Contractor with the Work of the Contractor, who shall cooperate with them. The Contractor shall participate with any Separate Contractors and the Owner in reviewing their construction schedules. The Contractor shall make any revisions to its construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Contractor, Separate Contractors, and the Owner until subsequently revised.

**§ 6.1.4** Unless otherwise provided in the Contract Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or with Separate Contractors, the Owner or its Separate Contractors shall have the same obligations and rights that the Contractor has under the Conditions of the Contract, including, without excluding others, those stated in Article 3, this Article 6, and Articles 10, 11, and 12.

##### **§ 6.2 Mutual Responsibility**

**§ 6.2.1** The Contractor shall afford the Owner and Separate Contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Contractor's construction and operations with theirs as required by the Contract Documents.

**§ 6.2.2** If part of the Contractor's Work depends for proper execution or results upon construction or operations by the Owner or a Separate Contractor, the Contractor shall, prior to proceeding with that portion of the Work, promptly notify the Architect of apparent discrepancies or defects in the construction or operations by the Owner or Separate Contractor that would render it unsuitable for proper execution and results of the Contractor's Work. Failure of the Contractor to notify the Architect of apparent discrepancies or defects prior to proceeding with the Work shall constitute an acknowledgment that the Owner's or Separate Contractor's completed or partially completed construction is fit and proper to receive the Contractor's Work. The Contractor shall not be responsible

for discrepancies or defects in the construction or operations by the Owner or Separate Contractor that are not apparent.

**§ 6.2.3** The Contractor shall reimburse the Owner for costs the Owner incurs that are payable to a Separate Contractor because of the Contractor's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Contractor for costs the Contractor incurs because of a Separate Contractor's delays, improperly timed activities, damage to the Work or defective construction.

**§ 6.2.4** The Contractor shall promptly remedy damage that the Contractor wrongfully causes to completed or partially completed construction or to property of the Owner or Separate Contractor as provided in Section 10.2.5.

**§ 6.2.5** The Owner and each Separate Contractor shall have the same responsibilities for cutting and patching as are described for the Contractor in Section 3.14.

### **§ 6.3 Owner's Right to Clean Up**

If a dispute arises among the Contractor, Separate Contractors, and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and the Architect will allocate the cost among those responsible.

## **ARTICLE 7 CHANGES IN THE WORK**

### **§ 7.1 General**

**§ 7.1.1** Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order, Construction Change Directive or order for a minor change in the Work, subject to the limitations stated in this Article 7 and elsewhere in the Contract Documents.

**§ 7.1.2** A Change Order shall be based upon agreement among the Owner, Contractor, and Architect. A Construction Change Directive requires agreement by the Owner and Architect and may or may not be agreed to by the Contractor. An order for a minor change in the Work may be issued by the Architect alone.

**§ 7.1.3** Changes in the Work shall be performed under applicable provisions of the Contract Documents. The Contractor shall proceed promptly with changes in the Work, unless otherwise provided in the Change Order, Construction Change Directive, or order for a minor change in the Work.

### **§ 7.2 Change Orders**

**§ 7.2.1** A Change Order is a written instrument prepared by the Owner and signed by the Owner and Contractor, and is reviewed by the Architect stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum; and
- .3 The extent of the adjustment, if any, in the Contract Time.

### **§ 7.3 Construction Change Directives**

**§ 7.3.1** A Construction Change Directive is a written order prepared by the Architect and signed by the Owner and Architect, directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or Contract Time, or both. The Owner may by Construction Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions, or other revisions, the Contract Sum and Contract Time being adjusted accordingly.

**§ 7.3.2** A Construction Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

**§ 7.3.3** If the Construction Change Directive provides for an adjustment to the Contract Sum, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Contract Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or

4 As provided in Section 7.3.4.

**§ 7.3.4** If the Contractor does not respond promptly or disagrees with the method for adjustment in the Contract Sum, the Architect shall determine the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase in the Contract Sum, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 7.3.3.3, the Contractor shall keep and present, in such form as the Architect may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Contract Documents, costs for the purposes of this Section 7.3.4 shall be limited to the following:

- 1 Costs of labor, including applicable payroll taxes, fringe benefits required by agreement or custom, workers' compensation insurance, and other employee costs approved by the Architect;
- 2 Costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
- 3 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
- 4 Costs of premiums for all bonds and insurance, permit fees, and sales, use, or similar taxes, directly related to the change; and
- 5 Costs of supervision and field office personnel directly attributable to the change.

**§ 7.3.5** If the Contractor disagrees with the adjustment in the Contract Time, the Contractor may make a Claim in accordance with applicable provisions of Article 15.

**§ 7.3.6** Upon receipt of a Construction Change Directive, the Contractor shall promptly proceed with the change in the Work involved and advise the Architect of the Contractor's agreement or disagreement with the method, if any, provided in the Construction Change Directive for determining the proposed adjustment in the Contract Sum or Contract Time.

**§ 7.3.7** A Construction Change Directive signed by the Contractor indicates the Contractor's agreement therewith, including adjustment in Contract Sum and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

**§ 7.3.8** The amount of credit to be allowed by the Contractor to the Owner for a deletion or change that results in a net decrease in the Contract Sum shall be actual net cost as confirmed by the Architect. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

**§ 7.3.9** Pending final determination of the total cost of a Construction Change Directive to the Owner, the Contractor may request payment for Work completed under the Construction Change Directive in Applications for Payment. The Architect will make an interim determination for purposes of monthly certification for payment for those costs and certify for payment the amount that the Architect determines, in the Architect's professional judgment, to be reasonably justified. The Architect's interim determination of cost shall adjust the Contract Sum on the same basis as a Change Order, subject to the right of either party to disagree and assert a Claim in accordance with Article 15.

**§ 7.3.10** When the Owner and Contractor agree with a determination made by the Architect concerning the adjustments in the Contract Sum and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner will prepare a Change Order. Change Orders may be issued for all or any part of a Construction Change Directive.

#### **§ 7.4 Minor Changes in the Work**

The Owner or Architect with the Owner's approval may order minor changes in the Work that are consistent with the intent of the Contract Documents and do not involve an adjustment in the Contract Sum or an extension of the Contract Time. The Architect's order for minor changes shall be in writing. If the Contractor believes that the proposed minor change in the Work will affect the Contract Sum or Contract Time, the Contractor shall notify the Owner and the Architect and shall not proceed to implement the change in the Work. If the Contractor performs the Work set forth in the order for a minor change without prior notice to the Owner that such change will affect the Contract Sum or Contract Time, the Contractor waives any adjustment to the Contract Sum or extension of the Contract Time.

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## **ARTICLE 8 TIME**

### **§ 8.1 Definitions**

§ 8.1.1 Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, allotted in the Contract Documents for Substantial Completion of the Work.

§ 8.1.2 The date of commencement of the Work is the date established in the Agreement.

§ 8.1.3 The date of Substantial Completion is the date certified by the Owner in accordance with Section 9.8.

§ 8.1.4 The term “day” as used in the Contract Documents shall mean calendar day unless otherwise specifically defined.

### **§ 8.2 Progress and Completion**

§ 8.2.1 Time limits stated in the Contract Documents are of the essence of the Contract. By executing the Agreement, the Contractor confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.2.2 The Contractor shall not knowingly, except by agreement or instruction of the Owner in writing, commence the Work prior to the effective date of insurance required to be furnished by the Contractor and Owner.

§ 8.2.3 The Contractor shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

### **§ 8.3 Delays and Extensions of Time**

§ 8.3.1 If the Contractor is delayed at any time in the commencement or progress of the Work by (1) an act or neglect of the Owner or Architect, of an employee of either, or of a Separate Contractor; (2) by changes ordered in the Work; (3) by labor disputes, fire, unusual delay in deliveries, unavoidable casualties, adverse weather conditions documented in accordance with Section 15.1.6.2, or other causes beyond the Contractor’s control; (4) by delay authorized by the Owner pending mediation and binding dispute resolution; or (5) by other causes that the Contractor asserts, and the Architect determines, justify delay, then the Contract Time shall be extended for such reasonable time as the Architect may determine.

§ 8.3.2 Claims relating to time shall be made in accordance with applicable provisions of Article 15.

§ 8.3.3 This Section 8.3 does not preclude recovery of damages for delay by either party under other provisions of the Contract Documents.

## **ARTICLE 9 PAYMENTS AND COMPLETION**

### **§ 9.1 Contract Sum**

§ 9.1.1 The Contract Sum is stated in the Agreement and, including authorized adjustments, is the total amount payable by the Owner to the Contractor for performance of the Work under the Contract Documents.

§ 9.1.2 If unit prices are stated in the Contract Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed so that application of such unit prices to the actual quantities causes substantial inequity to the Owner or Contractor, the applicable unit prices shall be equitably adjusted.

### **§ 9.2 Schedule of Values**

Where the Contract is based on a stipulated sum or Guaranteed Maximum Price, the Contractor shall submit a schedule of values to the Owner before the first Application for Payment, allocating the entire Contract Sum to the various portions of the Work. The schedule of values shall be prepared in the form, and supported by the data to substantiate its accuracy, required by the Owner. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Contractor’s Applications for Payment. Any changes to the schedule of values shall be submitted to the Owner and supported by such data to substantiate its accuracy as the Owner may require, and unless objected to by the Owner, shall be used as a basis for reviewing the Contractor’s subsequent Applications for Payment.

### **§ 9.3 Applications for Payment**

**§ 9.3.1** At least ten days before the date established for each progress payment, the Contractor shall submit to the Owner an itemized Application for Payment prepared in accordance with the schedule of values, if required under Section 9.2, for completed portions of the Work. The application shall be notarized, if required, and supported by all data substantiating the Contractor's right to payment that the Owner or Architect require, such as copies of requisitions, and releases and waivers of liens from Subcontractors and suppliers, and shall reflect retainage if provided for in the Contract Documents.

**§ 9.3.1.1** As provided in Section 7.3.9, such applications may include requests for payment on account of changes in the Work that have been properly authorized by Construction Change Directives, or by interim determinations of the Architect, but not yet included in Change Orders.

**§ 9.3.1.2** Applications for Payment shall not include requests for payment for portions of the Work for which the Contractor does not intend to pay a Subcontractor or supplier, unless such Work has been performed by others whom the Contractor intends to pay.

**§ 9.3.2** Unless otherwise provided in the Contract Documents, payments shall be made on account of materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Contractor with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage, and transportation to the site, for such materials and equipment stored off the site.

**§ 9.3.3** The Contractor warrants that title to all Work covered by an Application for Payment will pass to the Owner no later than the time of payment. The Contractor further warrants that upon submittal of an Application for Payment all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Contractor's knowledge, information, and belief, be free and clear of liens, claims, security interests, or encumbrances, in favor of the Contractor, Subcontractors, suppliers, or other persons or entities that provided labor, materials, and equipment relating to the Work.

### **§ 9.4 Not used**

*(Paragraphs Deleted)*

### **§ 9.5 Decisions to Withhold Certification**

**§ 9.5.1** The Owner may withhold an Application for Payment in whole or in part, to the extent reasonably necessary to protect the Owner, if in the Architect's or Owner's opinion the representations to the Owner required by Section 9.4.2 cannot be made. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Contractor as provided in Section 9.4.1. If the Contractor and Owner cannot agree on a revised amount, the Owner will promptly issue a Payment for the amount for which the Owner is able to make such representations. The Owner may also withhold a Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Payment previously issued, to such extent as may be necessary to protect the Owner from loss for which the Contractor is responsible, including loss resulting from acts and omissions described in Section 3.3.2, because of

- .1 defective Work not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims, unless security acceptable to the Owner is provided by the Contractor;
- .3 failure of the Contractor to make payments properly to Subcontractors or suppliers for labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a Separate Contractor;
- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Contract Documents.

§ 9.5.2 When either party disputes the decision regarding a Payment under Section 9.5.1, in whole or in part, that party may submit a Claim in accordance with Article 15.

§ 9.5.3 When the reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.4 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Contractor and to any Subcontractor or supplier to whom the Contractor failed to make payment for Work properly performed or material or equipment suitably delivered. If the Owner makes payments by joint check, the Owner shall notify the Contractor shall reflect such payment on its next Application for Payment.

## § 9.6 Progress Payments

§ 9.6.1 After the Architect has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Contract Documents, and shall so notify the Architect.

§ 9.6.2 The Contractor shall pay each Subcontractor, no later than seven days after receipt of payment from the Owner, the amount to which the Subcontractor is entitled, reflecting percentages actually retained from payments to the Contractor on account of the Subcontractor's portion of the Work. The Contractor shall, by appropriate agreement with each Subcontractor, require each Subcontractor to make payments to Sub-subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request, furnish to a Subcontractor, if practicable, information regarding percentages of completion or amounts applied for by the Contractor and action taken thereon by the Owner on account of portions of the Work done by such Subcontractor.

§ 9.6.4 The Owner has the right to request written evidence from the Contractor that the Contractor has properly paid Subcontractors and suppliers amounts paid by the Owner to the Contractor for subcontracted Work. If the Contractor fails to furnish such evidence within seven days, the Owner shall have the right to contact Subcontractors and suppliers to ascertain whether they have been properly paid. Neither the Owner nor Architect shall have an obligation to pay, or to see to the payment of money to, a Subcontractor or supplier, except as may otherwise be required by law.

§ 9.6.5 The Contractor's payments to suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Contract Documents.

§ 9.6.7 Unless the Contractor provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Contractor for Work properly performed by Subcontractors or provided by suppliers shall be held by the Contractor for those Subcontractors or suppliers who performed Work or furnished materials, or both, under contract with the Contractor for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Contractor, create any fiduciary liability or tort liability on the part of the Contractor for breach of trust, or entitle any person or entity to an award of punitive damages against the Contractor for breach of the requirements of this provision.

§ 9.6.8 Provided the Owner has fulfilled its payment obligations under the Contract Documents, the Contractor shall defend and indemnify the Owner from all loss, liability, damage or expense, including reasonable attorney's fees and litigation expenses, arising out of any lien claim or other claim for payment by any Subcontractor or supplier of any tier. Upon receipt of notice of a lien claim or other claim for payment, the Owner shall notify the Contractor. If approved by the applicable court, when required, the Contractor may substitute a surety bond for the property against which the lien or other claim for payment has been asserted.

## § 9.7 Failure of Payment

If the Architect does not issue a Certificate for Payment, through no fault of the Contractor, within seven days after receipt of the Contractor's Application for Payment, or if the Owner does not pay the Contractor within seven days after the date established in the Contract Documents, the amount certified by the Architect or awarded by binding

dispute resolution, then the Contractor may, upon seven additional days' notice to the Owner and Architect, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable costs of shutdown, delay and start-up, plus interest as provided for in the Contract Documents.

### **§ 9.8 Substantial Completion**

**§ 9.8.1** Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work for its intended use.

**§ 9.8.2** When the Contractor considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Contractor shall prepare and submit to the Architect and Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Contractor to complete all Work in accordance with the Contract Documents.

**§ 9.8.3** Upon receipt of the Contractor's list, the Architect will make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Architect's inspection discloses any item, whether or not included on the Contractor's list, which is not sufficiently complete in accordance with the Contract Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Contractor shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Architect. In such case, the Contractor shall then submit a request for another inspection by the Architect to determine Substantial Completion.

**§ 9.8.4** When the Work or designated portion thereof is substantially complete, the Contractor and Owner will prepare a Certificate of Substantial Completion that shall establish the date of Substantial Completion; establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Contractor shall finish all items on the list accompanying the Certificate. Warranties required by the Contract Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

**§ 9.8.5** The Certificate of Substantial Completion shall be reviewed by the Owner and Contractor for their written acceptance of responsibilities assigned to them in the Certificate. Upon such acceptance, submission of request by the Contractor and consent of surety if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Such payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Contract Documents.

### **§ 9.9 Partial Occupancy or Use**

**§ 9.9.1** The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Contractor, provided such occupancy or use is consented to by the insurer and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Contractor have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Contract Documents. When the Contractor considers a portion substantially complete, the Contractor shall prepare and submit a list to the Architect as provided under Section 9.8.2. Consent of the Contractor to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Contractor or, if no agreement is reached, by decision of the Architect.

**§ 9.9.2** Immediately prior to such partial occupancy or use, the Owner, Contractor, and Architect shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

**§ 9.9.3** Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Contract Documents.

## **§ 9.10 Final Completion and Final Payment**

**§ 9.10.1** Upon receipt of the Contractor's notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Architect will promptly make such inspection. When the Architect finds the Work acceptable under the Contract Documents and the Contract fully performed, the Architect will promptly issue a final Certificate for Payment stating that to the best of the Architect's knowledge, information and belief, and on the basis of the Architect's on-site visits and inspections, the Work has been completed in accordance with the Contract Documents and that the entire balance found to be due the Contractor and noted in the final Certificate is due and payable. The Architect's final Certificate for Payment will constitute a further representation that conditions listed in Section 9.10.2 as precedent to the Contractor's being entitled to final payment have been fulfilled.

**§ 9.10.2** Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work for which the Owner or the Owner's property might be responsible or encumbered (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect, (3) a written statement that the Contractor knows of no reason that the insurance will not be renewable to cover the period required by the Contract Documents, (4) consent of surety, if any, to final payment, (5) documentation of any special warranties, such as manufacturers' warranties or specific Subcontractor warranties, and (6) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts and releases and waivers of liens, claims, security interests, or encumbrances arising out of the Contract, to the extent and in such form as may be designated by the Owner. If a Subcontractor refuses to furnish a release or waiver required by the Owner, the Contractor may furnish a bond satisfactory to the Owner to indemnify the Owner against such lien, claim, security interest, or encumbrance. If a lien, claim, security interest, or encumbrance remains unsatisfied after payments are made, the Contractor shall refund to the Owner all money that the Owner may be compelled to pay in discharging the lien, claim, security interest, or encumbrance, including all costs and reasonable attorneys' fees.

**§ 9.10.3** If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Contractor or by issuance of Change Orders affecting final completion, and the Architect so confirms, the Owner shall, upon application by the Contractor and certification by the Architect, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed, corrected, and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Contract Documents, and if bonds have been furnished, the written consent of the surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Contractor to the Architect prior to certification of such payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of Claims.

**§ 9.10.4** The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests, or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Contract Documents;
- .3 terms of special warranties required by the Contract Documents; or
- .4 audits performed by the Owner, if permitted by the Contract Documents, after final payment.

**§ 9.10.5** Acceptance of final payment by the Contractor, a Subcontractor, or a supplier, shall constitute a waiver of claims by that payee except those previously made in writing and identified by that payee as unsettled at the time of final Application for Payment.

## **ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY**

### **§ 10.1 Safety Precautions and Programs**

The Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the performance of the Contract.

### **§ 10.2 Safety of Persons and Property**

**§ 10.2.1** The Contractor shall take reasonable precautions for safety of, and shall provide reasonable protection to prevent damage, injury, or loss to

- .1 employees on the Work and other persons who may be affected thereby;

Init.

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- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody, or control of the Contractor, a Subcontractor, or a Sub-subcontractor; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, structures, and utilities not designated for removal, relocation, or replacement in the course of construction.

§ 10.2.2 The Contractor shall comply with, and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property or their protection from damage, injury, or loss.

§ 10.2.3 The Contractor shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards; promulgating safety regulations; and notifying the owners and users of adjacent sites and utilities of the safeguards.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods are necessary for execution of the Work, the Contractor shall exercise utmost care and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Contractor shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Contract Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3 caused in whole or in part by the Contractor, a Subcontractor, a Sub-subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Contractor is responsible under Sections 10.2.1.2 and 10.2.1.3. The Contractor may make a Claim for the cost to remedy the damage or loss to the extent such damage or loss is attributable to acts or omissions of the Owner or Architect or anyone directly or indirectly employed by either of them, or by anyone for whose acts either of them may be liable, and not attributable to the fault or negligence of the Contractor. The foregoing obligations of the Contractor are in addition to the Contractor's obligations under Section 3.18.

§ 10.2.6 The Contractor shall designate a responsible member of the Contractor's organization at the site whose duty shall be the prevention of accidents. This person shall be the Contractor's superintendent unless otherwise designated by the Contractor in writing to the Owner and Architect.

§ 10.2.7 The Contractor shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

#### § 10.2.8 Injury or Damage to Person or Property

If either party suffers injury or damage to person or property because of an act or omission of the other party, or of others for whose acts such party is legally responsible, notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

#### § 10.3 Hazardous Materials and Substances

§ 10.3.1 The Contractor is responsible for compliance with any requirements included in the Contract Documents regarding hazardous materials or substances. If the Contractor encounters a hazardous material or substance not addressed in the Contract Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Contractor, the Contractor shall, upon recognizing the condition, immediately stop Work in the affected area and notify the Owner and Architect of the condition.

§ 10.3.2 Upon receipt of the Contractor's notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Contractor and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Contract Documents, the Owner shall furnish in writing to the Contractor and Architect the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of the material or substance or who are to perform the task of removal or safe containment of the material or substance. The Contractor and the Architect will promptly reply to the Owner in writing stating whether or not either has reasonable objection to the persons or

entities proposed by the Owner. If either the Contractor or Architect has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Contractor and the Architect have no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Contractor. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Contractor's reasonable additional costs of shutdown, delay, and start-up.

**§ 10.3.3** To the extent permitted by law, the Owner shall indemnify and hold harmless the Contractor, Subcontractors, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), except to the extent that such damage, loss, or expense is due to the fault or negligence of the party seeking indemnity.

**§ 10.3.4** The Owner shall not be responsible under this Section 10.3 for hazardous materials or substances the Contractor brings to the site unless such materials or substances are required by the Contract Documents. The Owner shall be responsible for hazardous materials or substances required by the Contract Documents, except to the extent of the Contractor's fault or negligence in the use and handling of such materials or substances.

**§ 10.3.5** The Contractor shall reimburse the Owner for the cost and expense the Owner incurs (1) for remediation of hazardous materials or substances the Contractor brings to the site and negligently handles, or (2) where the Contractor fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

**§ 10.3.6** If, without negligence on the part of the Contractor, the Contractor is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Contract Documents, the Owner shall reimburse the Contractor for all cost and expense thereby incurred to the extent permitted by law.

#### **§ 10.4 Emergencies**

In an emergency affecting safety of persons or property, the Contractor shall act, at the Contractor's discretion, to prevent threatened damage, injury, or loss. Additional compensation or extension of time claimed by the Contractor on account of an emergency shall be determined as provided in Article 15 and Article 7.

### **ARTICLE 11 INSURANCE AND BONDS**

#### **§ 11.1 Contractor's Insurance and Bonds**

**§ 11.1.1** The Contractor shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Contractor shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located. The Owner, Architect, and Architect's consultants shall be named as additional insureds under the Contractor's commercial general liability policy or as otherwise described in the Contract Documents.

**§ 11.1.2** The Contractor shall provide surety bonds of the types, for such penal sums, and subject to such terms and conditions as required by the Contract Documents. The Contractor shall purchase and maintain the required bonds from a company or companies lawfully authorized to issue surety bonds in the jurisdiction where the Project is located.

**§ 11.1.3** Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Contract, the Contractor shall promptly furnish a copy of the bonds or shall authorize a copy to be furnished.

**§ 11.1.4 Notice of Cancellation or Expiration of Contractor's Required Insurance.** Within three (3) business days of the date the Contractor becomes aware of an impending or actual cancellation or expiration of any insurance required by the Contract Documents, the Contractor shall provide notice to the Owner of such impending or actual cancellation

or expiration. Upon receipt of notice from the Contractor, the Owner shall, unless the lapse in coverage arises from an act or omission of the Owner, have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by the Contractor. The furnishing of notice by the Contractor shall not relieve the Contractor of any contractual obligation to provide any required coverage.

## **§ 11.2 Owner's Insurance**

**§ 11.2.1** The Owner shall purchase and maintain insurance of the types and limits of liability, containing the endorsements, and subject to the terms and conditions, as described in the Agreement or elsewhere in the Contract Documents. The Owner shall purchase and maintain the required insurance from an insurance company or insurance companies lawfully authorized to issue insurance in the jurisdiction where the Project is located.

**§ 11.2.2 Failure to Purchase Required Property Insurance.** If the Owner fails to purchase and maintain the required property insurance, with all of the coverages and in the amounts described in the Agreement or elsewhere in the Contract Documents, the Owner shall inform the Contractor in writing prior to commencement of the Work. Upon receipt of notice from the Owner, the Contractor may delay commencement of the Work and may obtain insurance that will protect the interests of the Contractor, Subcontractors, and Sub-Subcontractors in the Work. When the failure to provide coverage has been cured or resolved, the Contract Sum and Contract Time shall be equitably adjusted. In the event the Owner fails to procure coverage, the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent the loss to the Owner would have been covered by the insurance to have been procured by the Owner. The cost of the insurance shall be charged to the Owner by a Change Order. If the Owner does not provide written notice, and the Contractor is damaged by the failure or neglect of the Owner to purchase or maintain the required insurance, the Owner shall reimburse the Contractor for all reasonable costs and damages attributable thereto.

**§ 11.2.3 Notice of Cancellation or Expiration of Owner's Required Property Insurance.** Within three (3) business days of the date the Owner becomes aware of an impending or actual cancellation or expiration of any property insurance required by the Contract Documents, the Owner shall provide notice to the Contractor of such impending or actual cancellation or expiration. Unless the lapse in coverage arises from an act or omission of the Contractor: (1) the Contractor, upon receipt of notice from the Owner, shall have the right to stop the Work until the lapse in coverage has been cured by the procurement of replacement coverage by either the Owner or the Contractor; (2) the Contract Time and Contract Sum shall be equitably adjusted; and (3) the Owner waives all rights against the Contractor, Subcontractors, and Sub-subcontractors to the extent any loss to the Owner would have been covered by the insurance had it not expired or been cancelled. If the Contractor purchases replacement coverage, the cost of the insurance shall be charged to the Owner by an appropriate Change Order. The furnishing of notice by the Owner shall not relieve the Owner of any contractual obligation to provide required insurance.

## **§ 11.3 Waivers of Subrogation**

**§ 11.3.1** The Owner and Contractor waive all rights against (1) each other and any of their subcontractors, sub-subcontractors, agents, and employees, each of the other; (2) the Architect and Architect's consultants; and (3) Separate Contractors, if any, and any of their subcontractors, sub-subcontractors, agents, and employees, for damages caused by fire, or other causes of loss, to the extent those losses are covered by property insurance required by the Agreement or other property insurance applicable to the Project, except such rights as they have to proceeds of such insurance. The Owner or Contractor, as appropriate, shall require similar written waivers in favor of the individuals and entities identified above from the Architect, Architect's consultants, Separate Contractors, subcontractors, and sub-subcontractors. The policies of insurance purchased and maintained by each person or entity agreeing to waive claims pursuant to this section 11.3.1 shall not prohibit this waiver of subrogation. This waiver of subrogation shall be effective as to a person or entity (1) even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, (2) even though that person or entity did not pay the insurance premium directly or indirectly, or (3) whether or not the person or entity had an insurable interest in the damaged property.

**§ 11.3.2** If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, to the extent permissible by such policies, the Owner waives all rights in accordance with the terms of Section 11.3.1 for damages caused by fire or other causes of loss covered by this separate property insurance.



#### **§ 11.4 Loss of Use, Business Interruption, and Delay in Completion Insurance**

The Owner, at the Owner's option, may purchase and maintain insurance that will protect the Owner against loss of use of the Owner's property, or the inability to conduct normal operations, due to fire or other causes of loss. The Owner waives all rights of action against the Contractor and Architect for loss of use of the Owner's property, due to fire or other hazards however caused.

#### **§11.5 Adjustment and Settlement of Insured Loss**

**§ 11.5.1** A loss insured under the property insurance required by the Agreement shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any applicable mortgagee clause and of Section 11.5.2. The Owner shall pay the Architect and Contractor their just shares of insurance proceeds received by the Owner, and by appropriate agreements the Architect and Contractor shall make payments to their consultants and Subcontractors in similar manner.

**§ 11.5.2** Prior to settlement of an insured loss, the Owner shall notify the Contractor of the terms of the proposed settlement as well as the proposed allocation of the insurance proceeds. The Contractor shall have 14 days from receipt of notice to object to the proposed settlement or allocation of the proceeds. If the Contractor does not object, the Owner shall settle the loss and the Contractor shall be bound by the settlement and allocation. Upon receipt, the Owner shall deposit the insurance proceeds in a separate account and make the appropriate distributions. Thereafter, if no other agreement is made or the Owner does not terminate the Contract for convenience, the Owner and Contractor shall execute a Change Order for reconstruction of the damaged or destroyed Work in the amount allocated for that purpose. If the Contractor timely objects to either the terms of the proposed settlement or the allocation of the proceeds, the Owner may proceed to settle the insured loss, and any dispute between the Owner and Contractor arising out of the settlement or allocation of the proceeds shall be resolved pursuant to Article 15. Pending resolution of any dispute, the Owner may issue a Construction Change Directive for the reconstruction of the damaged or destroyed Work.

### **ARTICLE 12 UNCOVERING AND CORRECTION OF WORK**

#### **§ 12.1 Uncovering of Work**

**§ 12.1.1** If a portion of the Work is covered contrary to the Architect's request or to requirements specifically expressed in the Contract Documents, it must, if requested in writing by the Architect, be uncovered for the Architect's examination and be replaced at the Contractor's expense without change in the Contract Time.

**§ 12.1.2** If a portion of the Work has been covered that the Architect has not specifically requested to examine prior to its being covered, the Architect may request to see such Work and it shall be uncovered by the Contractor. If such Work is in accordance with the Contract Documents, the Contractor shall be entitled to an equitable adjustment to the Contract Sum and Contract Time as may be appropriate. If such Work is not in accordance with the Contract Documents, the costs of uncovering the Work, and the cost of correction, shall be at the Contractor's expense.

#### **§ 12.2 Correction of Work**

##### **§ 12.2.1 Before Substantial Completion**

The Contractor shall promptly correct Work rejected by the Architect or failing to conform to the requirements of the Contract Documents, discovered before Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for the Architect's services and expenses made necessary thereby, shall be at the Contractor's expense.

##### **§ 12.2.2 After Substantial Completion**

**§ 12.2.2.1** In addition to the Contractor's obligations under Section 3.5, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of any applicable special warranty required by the Contract Documents, any of the Work is found to be not in accordance with the requirements of the Contract Documents, the Contractor shall correct it promptly after receipt of notice from the Owner to do so, unless the Owner has previously given the Contractor a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of Work, if the Owner fails to notify the Contractor and give the Contractor an opportunity to make the correction, the Owner waives the rights to require correction by the Contractor and to make a claim for breach of warranty. If the Contractor fails to correct nonconforming Work within

a reasonable time during that period after receipt of notice from the Owner or Architect, the Owner may correct it in accordance with Section 2.5.

**§ 12.2.2.2** The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

**§ 12.2.2.3** The one-year period for correction of Work shall not be extended by corrective Work performed by the Contractor pursuant to this Section 12.2.

**§ 12.2.3** The Contractor shall remove from the site portions of the Work that are not in accordance with the requirements of the Contract Documents and are neither corrected by the Contractor nor accepted by the Owner.

**§ 12.2.4** The Contractor shall bear the cost of correcting destroyed or damaged construction of the Owner or Separate Contractors, whether completed or partially completed, caused by the Contractor's correction or removal of Work that is not in accordance with the requirements of the Contract Documents.

**§ 12.2.5** Nothing contained in this Section 12.2 shall be construed to establish a period of limitation with respect to other obligations the Contractor has under the Contract Documents. Establishment of the one-year period for correction of Work as described in Section 12.2.2 relates only to the specific obligation of the Contractor to correct the Work, and has no relationship to the time within which the obligation to comply with the Contract Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Contractor's liability with respect to the Contractor's obligations other than specifically to correct the Work.

### **§ 12.3 Acceptance of Nonconforming Work**

If the Owner prefers to accept Work that is not in accordance with the requirements of the Contract Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

## **ARTICLE 13 MISCELLANEOUS PROVISIONS**

### **§ 13.1 Governing Law**

The Contract shall be governed by the law of the place where the Project is located, excluding that jurisdiction's choice of law rules. If the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 15.4.

### **§ 13.2 Successors and Assigns**

**§ 13.2.1** The Owner and Contractor respectively bind themselves, their partners, successors, assigns, and legal representatives to covenants, agreements, and obligations contained in the Contract Documents. Except as provided in Section 13.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

**§ 13.2.2** The Owner may, without consent of the Contractor, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Contract Documents. The Contractor shall execute all consents reasonably required to facilitate the assignment.

### **§ 13.3 Rights and Remedies**

**§ 13.3.1** Duties and obligations imposed by the Contract Documents and rights and remedies available thereunder shall be in addition to and not a limitation of duties, obligations, rights, and remedies otherwise imposed or available by law.

**§ 13.3.2** No action or failure to act by the Owner, Architect, or Contractor shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed upon in writing.

### § 13.4 Tests and Inspections

§ 13.4.1 Tests, inspections, and approvals of portions of the Work shall be made as required by the Contract Documents and by applicable laws, statutes, ordinances, codes, rules, and regulations or lawful orders of public authorities. Unless otherwise provided, the Contractor shall make arrangements for such tests, inspections, and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections, and approvals. The Contractor shall give the Architect timely notice of when and where tests and inspections are to be made so that the Architect may be present for such procedures. The Owner shall bear costs of tests, inspections, or approvals that do not become requirements until after bids are received or negotiations concluded. The Owner shall directly arrange and pay for tests, inspections, or approvals where building codes or applicable laws or regulations so require.

§ 13.4.2 If the Architect, Owner, or public authorities having jurisdiction determine that portions of the Work require additional testing, inspection, or approval not included under Section 13.4.1, the Architect will, upon written authorization from the Owner, instruct the Contractor to make arrangements for such additional testing, inspection, or approval, by an entity acceptable to the Owner, and the Contractor shall give timely notice to the Architect of when and where tests and inspections are to be made so that the Architect may be present for such procedures. Such costs, except as provided in Section 13.4.3, shall be at the Owner's expense.

§ 13.4.3 If procedures for testing, inspection, or approval under Sections 13.4.1 and 13.4.2 reveal failure of the portions of the Work to comply with requirements established by the Contract Documents, all costs made necessary by such failure, including those of repeated procedures and compensation for the Architect's services and expenses, shall be at the Contractor's expense.

§ 13.4.4 Required certificates of testing, inspection, or approval shall, unless otherwise required by the Contract Documents, be secured by the Contractor and promptly delivered to the Architect.

§ 13.4.5 If the Architect is to observe tests, inspections, or approvals required by the Contract Documents, the Architect will do so promptly and, where practicable, at the normal place of testing.

§ 13.4.6 Tests or inspections conducted pursuant to the Contract Documents shall be made promptly to avoid unreasonable delay in the Work.

*(Paragraphs Deleted)*

## ARTICLE 14 TERMINATION OR SUSPENSION OF THE CONTRACT

### § 14.1 Termination by the Contractor

§ 14.1.1 The Contractor may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency, that requires all Work to be stopped;
- .3 Because the Architect has not issued a Certificate for Payment and has not notified the Contractor of the reason for withholding certification as provided in Section 9.4.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Contract Documents; or
- .4 The Owner has failed to furnish to the Contractor reasonable evidence as required by Section 2.2.

§ 14.1.2 The Contractor may terminate the Contract if, through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, their agents or employees, or any other persons or entities performing portions of the Work, repeated suspensions, delays, or interruptions of the entire Work by the Owner as described in Section 14.3, constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 14.1.3 If one of the reasons described in Section 14.1.1 or 14.1.2 exists, the Contractor may, upon seven days' notice to the Owner and Architect, terminate the Contract and recover from the Owner payment for Work executed, as well as reasonable overhead and profit on Work not executed, and costs incurred by reason of such termination.

§ 14.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Contractor, a Subcontractor, a Sub-subcontractor, or their agents or employees or any other persons or entities performing portions of the Work because the Owner has repeatedly failed to fulfill the Owner's obligations under the Contract Documents with respect to matters important to the progress of the Work, the Contractor may, upon seven additional days' notice to the Owner and the Architect, terminate the Contract and recover from the Owner as provided in Section 14.1.3.

#### § 14.2 Termination by the Owner for Cause

§ 14.2.1 The Owner may terminate the Contract if the Contractor

- .1 repeatedly refuses or fails to supply enough properly skilled workers or proper materials;
- .2 fails to make payment to Subcontractors or suppliers in accordance with the respective agreements between the Contractor and the Subcontractors or suppliers;
- .3 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .4 otherwise is guilty of substantial breach of a provision of the Contract Documents.

§ 14.2.2 When any of the reasons described in Section 14.2.1 exist, and upon certification by the Architect that sufficient cause exists to justify such action, the Owner may, without prejudice to any other rights or remedies of the Owner and after giving the Contractor and the Contractor's surety, if any, seven days' notice, terminate employment of the Contractor and may, subject to any prior rights of the surety:

- .1 Exclude the Contractor from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Contractor;
- .2 Accept assignment of subcontracts pursuant to Section 5.4; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Contractor, the Owner shall furnish to the Contractor a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 14.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 14.2.1, the Contractor shall not be entitled to receive further payment until the Work is finished.

§ 14.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work, including compensation for the Architect's services and expenses made necessary thereby, and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Contractor. If such costs and damages exceed the unpaid balance, the Contractor shall pay the difference to the Owner. The amount to be paid to the Contractor or Owner, as the case may be, shall be certified by the Initial Decision Maker, upon application, and this obligation for payment shall survive termination of the Contract.

#### § 14.3 Suspension by the Owner for Convenience

§ 14.3.1 The Owner may, without cause, order the Contractor in writing to suspend, delay or interrupt the Work, in whole or in part for such period of time as the Owner may determine.

§ 14.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay, or interruption under Section 14.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was, or would have been, so suspended, delayed, or interrupted, by another cause for which the Contractor is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

#### § 14.4 Termination by the Owner for Convenience

§ 14.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 14.4.2 Upon receipt of notice from the Owner of such termination for the Owner's convenience, the Contractor shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing subcontracts and purchase orders and enter into no further subcontracts and purchase orders.

**§ 14.4.3** In case of such termination for the Owner's convenience, the Owner shall pay the Contractor for Work properly executed; costs incurred by reason of the termination, including costs attributable to termination of Subcontracts; and the termination fee, if any, set forth in the Agreement.

## **ARTICLE 15 CLAIMS AND DISPUTES**

### **§ 15.1 Claims**

#### **§ 15.1.1 Definition**

A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, a change in the Contract Time, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Contractor arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim. This Section 15.1.1 does not require the Owner to file a Claim in order to impose liquidated damages in accordance with the Contract Documents.

#### **§ 15.1.2 Time Limits on Claims**

The Owner and Contractor shall commence all Claims and causes of action against the other and arising out of or related to the Contract, whether in contract, tort, breach of warranty or otherwise, in accordance with the requirements of the binding dispute resolution method selected in the Agreement and within the period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Contractor waive all Claims and causes of action not commenced in accordance with this Section 15.1.2.

#### **§ 15.1.3 Notice of Claims**

**§ 15.1.3.1** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered prior to expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party and to the Initial Decision Maker with a copy sent to the Architect, if the Architect is not serving as the Initial Decision Maker. Claims by either party under this Section 15.1.3.1 shall be initiated within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

**§ 15.1.3.2** Claims by either the Owner or Contractor, where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2, shall be initiated by notice to the other party. In such event, no decision by the Initial Decision Maker is required.

#### **§ 15.1.4 Continuing Contract Performance**

**§ 15.1.4.1** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 14, the Contractor shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Contract Documents.

**§ 15.1.4.2** The Contract Sum and Contract Time shall be adjusted in accordance with the Initial Decision Maker's decision, subject to the right of either party to proceed in accordance with this Article 15. The Architect will issue Certificates for Payment in accordance with the decision of the Initial Decision Maker.

#### **§ 15.1.5 Claims for Additional Cost**

If the Contractor wishes to make a Claim for an increase in the Contract Sum, notice as provided in Section 15.1.3 shall be given before proceeding to execute the portion of the Work that is the subject of the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

#### **§ 15.1.6 Claims for Additional Time**

**§ 15.1.6.1** If the Contractor wishes to make a Claim for an increase in the Contract Time, notice as provided in Section 15.1.3 shall be given. The Contractor's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 15.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

#### § 15.1.7 Waiver of Claims for Consequential Damages

The Contractor and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Contractor for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit, except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 14. Nothing contained in this Section 15.1.7 shall be deemed to preclude assessment of liquidated damages, when applicable, in accordance with the requirements of the Contract Documents.

#### § 15.2 Initial Decision

§ 15.2.1 Claims, excluding those where the condition giving rise to the Claim is first discovered after expiration of the period for correction of the Work set forth in Section 12.2.2 or arising under Sections 10.3, 10.4, and 11.5, shall be referred to the Initial Decision Maker for initial decision. The Architect will serve as the Initial Decision Maker, unless otherwise indicated in the Agreement. Except for those Claims excluded by this Section 15.2.1, an initial decision shall be required as a condition precedent to mediation of any Claim. If an initial decision has not been rendered within 30 days after the Claim has been referred to the Initial Decision Maker, the party asserting the Claim may demand mediation without a decision having been made. Unless the Initial Decision Maker and all affected parties agree, the Initial Decision Maker will not decide disputes between the Contractor and persons or entities other than the Owner.

§ 15.2.2 The Initial Decision Maker will review Claims and within ten days of the receipt of a Claim take one or more of the following actions: (1) request additional supporting data from the claimant or a response with supporting data from the other party, (2) reject the Claim in whole or in part, (3) approve the Claim, (4) suggest a compromise, or (5) advise the parties that the Initial Decision Maker is unable to resolve the Claim if the Initial Decision Maker lacks sufficient information to evaluate the merits of the Claim or if the Initial Decision Maker concludes that, in the Initial Decision Maker's sole discretion, it would be inappropriate for the Initial Decision Maker to resolve the Claim.

§ 15.2.3 In evaluating Claims, the Initial Decision Maker may, but shall not be obligated to, consult with or seek information from either party or from persons with special knowledge or expertise who may assist the Initial Decision Maker in rendering a decision. The Initial Decision Maker may request the Owner to authorize retention of such persons at the Owner's expense.

§ 15.2.4 If the Initial Decision Maker requests a party to provide a response to a Claim or to furnish additional supporting data, such party shall respond, within ten days after receipt of the request, and shall either (1) provide a response on the requested supporting data, (2) advise the Initial Decision Maker when the response or supporting data will be furnished, or (3) advise the Initial Decision Maker that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Initial Decision Maker will either reject or approve the Claim in whole or in part.

§ 15.2.5 The Initial Decision Maker will render an initial decision approving or rejecting the Claim, or indicating that the Initial Decision Maker is unable to resolve the Claim. This initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) notify the parties and the Architect, if the Architect is not serving as the Initial Decision Maker, of any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 15.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 15.2.6.1.

*(Paragraph Deleted)*

§ 15.2.7 In the event of a Claim against the Contractor, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Contractor's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 15.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

### § 15.3 Mediation

§ 15.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 15.1.7, shall be subject to mediation if requested by either party.

§ 15.3.2 The parties shall endeavor to reach resolution of Claims through good faith direct discussions between the Parties' representatives, who shall possess the necessary authority to resolve such Claims. If the Parties' representatives are not able to resolve such Claims, the parties shall endeavor to resolve their Claims by Mediation. A request for mediation shall be made in writing and delivered to the other party to the Contract.

§ 15.3.3 Not used.

§ 15.3.4 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

### § 16. Non-Appropriation

§ 16.1 All financial obligations of the Owner 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 Owner's credit or faith, directly or indirectly, to the other parties.

## § 17

- Additional Provisions for Compliance with Colorado Law. The Parties agree that the following additional provisions are hereby incorporated into the Agreement and shall be incorporated consistent with Colorado law:

**COLORADO LABOR.** If the contract price exceeds \$500,000, the Construction Manager 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.

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

**FINAL PAYMENT.** Upon satisfactory completion of the Work, the City Representative will provide the Construction Manager with a written acceptance of the Work as set forth in the Agreement. Final 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.

**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 Construction Manager warrants that it has not retained any entity or person, other than a bona fide employee working solely for the Construction Manager, to solicit or secure this Agreement.

**CHANGE ORDERS.** 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 Construction Manager 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 Construction Manager prior to the **execution or other finalization of a change order or contract amendment**, and (ii) the Construction Manager has submitted to the City an estimate of the cost for the additional compensable work, then the City shall reimburse the Construction Manager for the costs associated with such additional work on a periodic basis in accordance with the terms of this Agreement and its amendments.

**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 Construction Manager, based upon considerations which include, but are not limited to, public inconvenience and additional contract administration costs. Therefore, the Construction Manager will be liable to the City, as liquidated damages (and not as a penalty), in the amount of \$750 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 Construction Manager under this Agreement or, at its option, to collect such liquidated damages directly from the Construction Manager or its surety.



Attachment 1



**CITY AND COUNTY OF BROOMFIELD**  
**SUNRIDGE LIFT STATION**  
Guaranteed Maximum Price

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**CITY AND COUNTY OF BROOMFIELD**  
**SUNRIDGE LIFT STATION**  
 GMP - Totals Summary  
 August 22, 2024

<b>Construction Costs</b>		
01	General Requirements	\$ 571,886
02	Existing Conditions	\$ 319,304
03	Concrete	\$ 357,369
04	Masonry	\$ 16,690
05	Metals	\$ 60,463
07	Thermal & Moisture Protection	\$ 63,763
08	Openings	\$ 14,537
09	Finishes	\$ 76,687
10	Specialties	\$ 4,707
23	HVAC	\$ 32,423
26	Electrical	\$ 362,447
31	Earthwork	\$ 587,718
32	Exterior Improvements	\$ 154,219
33	Utilities	\$ 483,912
41	Material Processing and Handling Equipment	\$ 8,438
43	Self Priming Centrifugal Pumps	\$ 101,429
<b>Total Construction Costs*</b>		<b>\$ 3,215,992</b>
<b>VE Savings (Included in Total Construction Costs)</b>		<b>\$ 348,244</b>
<b>Subtotal</b>		<b>\$ 2,867,748</b>
<b>Construction Manager Fee</b>		<b>7.50% \$ 215,081</b>
<b>Subtotal</b>		<b>\$ 3,082,829</b>
<b>Bonds &amp; Insurance</b>		<b>1.50% \$ 46,242</b>
<b>TOTAL</b>		<b>\$ 3,129,072</b>
<b>Contingency</b>		<b>7.00% \$ 219,035</b>
<b>TOTAL INCLUDING Contingency</b>		<b>\$ 3,348,107</b>

*\*Includes Labor Burden and Small Tools*



**CITY AND COUNTY OF BROOMFIELD  
SUNRIDGE LIFT STATION**

**GMP - Assumptions, Clarifications, & Exceptions**

August 22, 2024

1. Moltz did not include any building permit fees or right of way fees. Moltz will put together plans, get any necessary licenses, and help procure the permits but we did not carry any fees for these permits.
2. Placement of buried vault can be moved East of pump station to limit conflict with utilities.
3. Overflow vault is place slab on grade per the soils report recommendations with 1' of rock/road base under vault with double solid sleeves used on pipe for flex.
4. ~~Lining for pipe will terminate 9' outside of manhole and building with a fiberglass termination piece connected to new pipe with a solid sleeve placed from 9' outside building into building and manhole.~~
5. Roads can be shut down during the lining process (approx. 1 week). Moltz is carrying traffic control dollars in GMP.
6. Large trees can be removed for construction and replaced after construction.
7. Moltz is carrying \$100,000 for landscape replacement, trees and sprinkler replacement. Assuming existing system can be expanded for irrigation.
8. Assuming excel fee to bring in new transformer is paid for by Broomfield.
9. Bypass pumps can be electric if new three phase power is on site before November if not sound attenuated diesel pumps will have to be utilized.
10. Pricing for Nichiha Siding and Stone Coated Metal Roof included.
11. Hollow Metal Doors were quoted in place of FRP Doors.
12. Quotes for door and hardware did not include card reader security system.
13. We have included VFD's in the MCP for the Pumps and a Starter for the Blower.
14. VFD's and Starters are being provided by Electrical Subcontractor/Integrator.
15. We have included reusing generator and ats from Lac Amora and reusing existing radio equipment.
16. We have included a water on floor sensor and alarm
17. We are assuming we will need a few minor road closures for multiple tasks to be completed throughout the project for demo and installation. We have included traffic control dollars in GMP.
18. We are assuming Broomfield is procuring necessary easements.
19. We included a pour in place method for the emergency vault with precast riser's vs precast vault due to weights and access.
20. Moltz included reroute of the existing storm drain line to allow the new emergency vault location as mentioned above.
21. We are Assuming blower piping over to the wet well is stainless steel piping and rubber hoses down in to wet well similar to Lac amora.
22. ~~The slip lining contractor that we used is a Division of C&L that was referred to Moltz by Broomfield as a preferred contractor.~~
23. ~~With no slip lining spec and only a description in the Memorandum, we followed Insituforms (Division of C&L) standard procedures for install process and material.~~
24. ~~Slip lining is based off piping currently not having any damages as described in addendum #1. As per the drawings and Memorandum no valves, bends etc. are anticipated in slip lined portion of pipe.~~



- 
- ~~25. Assuming the Pipe cleaning for the CIPP slip lining is up to three passes of cleaning. Any additional is heavy cleaning and will be additional charges.~~
  - 26. We included flow filling the existing dry well.
  - ~~27. Included SpectraShield coating on Emergency Overflow Vault only.~~



**CITY AND COUNTY OF BROOMFIELD**  
**SUNRIDGE LIFT STATION**  
 GMP - Value Engineering  
 August 22, 2024

Accepted By:

Description	Estimated	Final	Action	Accepted By:			Notes
				Broomfield	BMcD	Moltz	
1 Delete Slip Lining	\$ (202,159.00)	\$ (202,159.00)	Accept				
2 Use Flow Liner for Slip Lining (Not Preferred Contractor, Liner Terminates in MH)	\$ (78,060.00)	\$ -	Decline				Send Info.
3 Switch from Nichiha Siding to Wood Siding and change to Asphalt Shingles	\$ (10,000.00)	\$ -	Decline				Keep metal roof, look at siding - color will match existing buildings
4 Delete SpectraShield Coating	\$ (45,285.00)	\$ (45,285.00)	Accept				
5 Use Siena laydown yard for temporary stockpile and backfill with native material	\$ (100,800.00)	\$ (100,800.00)	Accept				
6 B&M Desgin Vault - Cast in Place	\$ (20,000.00)						B&M will find out what their cost
7 Drywall on Ceiling		\$ -	Decline				Match Lac Amora
8 Add provisions for Card Reader							Match Lac Amora
9 Add manhole steps down into emergency vault							
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Total Adjustment to Costs Subject to Contractor's Fee \$ (348,244.00)



**CITY AND COUNTY OF BROOMFIELD  
SUNRIDGE LIFT STATION**

GMP - Quotes  
August 22, 2024

Provided in Separate File

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
<b>010000</b>			<b>Project Management and Coordination</b>								
	<b>01 -100</b>		<b>General Conditions</b>								
		1006.100	Project Manager	22.00 wk	-			1,650	92,400	94,050	94,050
		1006.100	Assistant Project Manager	20.00 wk	-			1,500	69,000	70,500	70,500
		1014.100	Project Coordinator	4.00 wk					8,280	8,280	8,280
		1022.100	Superintendent	36.00 wk	103,860					103,860	149,558
		1116.100	Safety	1.00 ls		15,000			20,000	35,000	35,000
		1116.200	Temporary Fences	1.00 ls					22,000	22,000	22,000
		1162.100	Cell Phone	18.00 Mnth				1,800		1,800	1,800
		1162.100	Electric Power	9.00 Mnth		2,700				2,700	2,700
		1162.100	Telephone/Internet Charges	9.00 Mnth		1,350				1,350	1,350
		1162.100	Temporary Toilets	11.00 Mnth		2,750				2,750	2,750
		1162.100	Drinking Water	1.00 ls		1,000				1,000	1,000
		1500.100	Preconstruction	1.00 ls					18,000	18,000	18,000
		1614.100	Project Signs 4x8	1.00 ea	144	1,500				1,644	1,707
		1630.100	Field Engineer	10.00 wk	19,250					19,250	27,720
		1630.100	Survey Equipment, Project	9.00 Mnth		0		4,500		4,500	4,500
		1642.100	Per Diem	42.00 wk	0	0	0	0	38,640	38,640	38,640
		1642.100	Advertising	1.00 ls					1,000	1,000	1,000
		1644.100	Site Security/Alarm System	9.00 Mnth	2,268	4,500				6,768	7,766
		1672.200	Computers	9.00 Mnth					10,800	10,800	10,800
		1714.100	Final Cleaning	1.00 ls		500				500	500
		1714.100	Dumpster Rental/Pick up	14.00 Wk		11,200				11,200	11,200
		1900.142	40' Storage Trailer	9.00 Mnth				2,700	450	3,150	3,150
		1900.142	Temp Office and Storage Construction	9.00 Mnth	972			4,050		5,022	5,450
		1900.210	Pickup	18.00 Mnth				23,940	12,600	36,540	36,540
		1900.210	(3rd Party) Semi Tractor	1.00 ls			6,000			6,000	6,000
		1900.210	Mob & Demob Labor	1.00 hr	1,728		0			1,728	2,488
		2305.250	Staging Area Rock	100.00 cy	720	6,400				7,120	7,437
<b>024119</b>			<b>Selective Demolition</b>								
	<b>01 -100</b>		<b>General Conditions</b>								
		1900.020	Generators 25 kw, Wacker/Perkins (35 HP) (L)	18.00 Mnth				21,600	9,900	31,500	31,500
	<b>01 -100</b>		<b>Equipment</b>								
		1900.132	John Deere 624 Loader (172 HP) (M)	6.00 Mnth				45,900	9,000	54,900	54,900
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	5.00 Mnth				46,200	8,750	54,950	54,950
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	9.00 Mnth				25,434	4,500	29,934	29,934
	<b>02-2b</b>		<b>Demo Piping and pumps in dry well DD-100-A</b>								
		2220.605	Demo DI Pipe 4" intake and discharge	50.00 lf	3,420	0				3,420	4,925
		11000.100	Wel Well Cleaning	1.00 ls		200				200	200
	<b>020-</b>		<b>Demo existing structure CD-100-B</b>								
		1714.100	Dump Fees by ton	4.00 tn		380				380	380
		1900.132	John Deere 624 Loader (172 HP) (M)	0.15 Mnth		0		1,148	450	1,598	1,598
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.05 Mnth				462	175	637	637
		1900.210	(3rd Party) Dump Truck, 10 wheel	3.00 Hrs	0		360			360	360
		2220.045	Demo Wood Building	160.00 sf	1,728					1,728	2,488
	<b>020-</b>		<b>Site Demolition misc traffic control</b>								
		1116.100	Traffic Control	1.00 ls			50,000			50,000	50,000
	<b>0203-</b>		<b>Demo Gen. Concrete Pad and Generator</b>								
		1900.210	(3rd Party) Dump Truck, 10 wheel	2.00 Hrs			240			240	240
		2220.083	Demo Concrete	4.00 cy	576					576	829
		2220.140	Demo Equipment - Generator	1.00 ls					4,000	4,000	4,000
		2220.980	Dump Fees	3.60 tn		72				72	72
	<b>0204-</b>		<b>Demo existing curb and gutter DD-100-B</b>								
		1714.100	Dump Fees by ton	9.72 tn		97				97	97
		1900.132	John Deere 624 Loader (172 HP) (M)	0.15 Mnth		0		1,148	450	1,598	1,598
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.15 Mnth				1,386	525	1,911	1,911
		1900.210	(3rd Party) Dump Truck, 10 wheel	4.00 Hrs	0		480			480	480
		2220.083	Demo Conc SOG no Reinf	10.00 cy	540					540	778

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	0204-		<b>Demo Conc Walls/ footing on existing structure SD-100-B North &amp; South</b>								
		1714.100	Dump Fees by ton	7.56 tn		76				76	76
		1900.132	John Deere 624 Loader (172 HP) (M)	0.50 Mnth		0		3,825	1,500	5,325	5,325
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.50 Mnth				4,620	1,750	6,370	6,370
		1900.210	(3rd Party) Dump Truck, 10 wheel	1.75 Hrs	0		210			210	210
		2220.083	Demo Conc Walls Heavy Rebar	3.60 cy	2,333					2,333	3,360
		15060.290	PS Misc Hardware for lifting	1.00 ea		100				100	100
	0204-		<b>Demo Conc Slabs and excavator for footing saw cut east and west walls</b>								
		1714.100	Dump Fees by ton	9.02 tn		90				90	90
		1900.132	John Deere 624 Loader (172 HP) (M)	0.20 Mnth		0		1,530	600	2,130	2,130
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.20 Mnth				1,848	700	2,548	2,548
		1900.138	Mikasa Jumping Jack Compactor (L)	0.20 Mnth				133	20	153	153
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	0.20 Mnth				565	100	665	665
		1900.210	(3rd Party) Dump Truck, 10 wheel	2.08 Hrs	0	0	249			249	249
		2220.083	Demo Conc Footings Heavy Rebar	4.30 cy	2,320					2,320	3,341
		3100.186	misc hardware for lifting	1.00 ls		100				100	100
	0204-		<b>Demo Conc slab for new access hatch SD-100-B</b>								
		1166.100	Chain Recertification	1.00 ls			2,500			2,500	2,500
		1714.100	Dump Fees by ton	0.56 tn		6				6	6
		1900.132	John Deere 624 Loader (172 HP) (M)	0.05 Mnth		0		383	150	533	533
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.05 Mnth				462	175	637	637
		1900.210	(3rd Party) Dump Truck, 10 wheel	0.13 Hrs	0		16			16	16
		1900.300	hardware for rigging up concrete demo	1.00 ls		100				100	100
		2220.083	Demo Conc Footings Heavy Rebar	0.27 cy	577					577	830
	0204-		<b>Demo Conc Slabs SD-100-B</b>								
		1714.100	Dump Fees by ton	9.02 tn		180				180	180
		1900.132	John Deere 624 Loader (172 HP) (M)	0.10 Mnth		0		765	300	1,065	1,065
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.10 Mnth				924	350	1,274	1,274
		1900.210	(3rd Party) Dump Truck, 10 wheel	2.08 Hrs	0		249			249	249
		2220.083	Demo Conc Footings Heavy Rebar	4.30 cy	3,557					3,557	5,122
		15060.290	PS Misc Hardware for lifting	1.00 ea		100				100	100
	0204-		<b>patch existing holes from suction lines DD-100-A</b>								
		1360.100	Patch 2 8" holes from existing suction lines	1.00 ls	864	750				1,614	1,994
		5124.005	Steel Plate 1/4"	2.00 ea		400				400	400
	0204-		<b>core drill and saw cutting sub</b>								
		15403.100	Core drilling and saw cutting Subcontractor	1.00 ls			8,000			8,000	8,000
	0206-		<b>Demo Buried existing 30" storm drain CD-100-B</b>								
		1714.100	Dump Fees by ton	8.50 tn		808				808	808
		1900.132	John Deere 624 Loader (172 HP) (M)	0.25 Mnth	0	0		1,913	750	2,663	2,663
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.03 Mnth				249	95	344	344
		1900.138	Mikasa Jumping Jack Compactor (L)	0.01 Mnth	0			9	1	11	11
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	0.01 Mnth	0			40	7	47	47
		1900.210	(3rd Party) Dump Truck, 10 wheel	6.00 Hrs	0		720			720	720
		2220.083	Demo Manhole	1.00 ls	720					720	1,037
		2230.100	Demo Buried RCP (30")	100.00 lf	3,456	0				3,456	4,977
		2333.010	Cut Existing	4.00 ea	288					288	415
		2333.010	Plug Existing	2.00 ea	72	1,000				1,072	1,104
		2333.010	Support Existing	2.00 ea	72	100				172	204
		2333.030	Trench Box 10' Deep	100.00 lf		5,000				5,000	5,000
	0212-		<b>remove radio pole CD-100-B</b>								
		1900.132	John Deere 624 Loader (172 HP) (M)	0.20 Mnth		0		1,530	600	2,130	2,130
		2220.490	Demo & Replace radio tower/ flag pole	1.00 ea	864					864	1,244
	0296-		<b>Tree Removal</b>								
		2322.090	Trees - Removal	1.00 ls			9,000			9,000	9,000
032000			<b>Concrete Reinforcement</b>								
	0385-		<b>Reinforcement</b>								
		3200.980	Rebar Supply	1.00 ls		9,500				9,500	9,500



Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	<b>0385-</b>		<b>Reinforcement</b>								
		3200.980	Rebar Install (sub)	1.00 tn			<b>10,000</b>			10,000	10,000
		3200.980	Rebar Chairs	200.00 ea		200				200	200
		3200.980	Rebar Chairs Caissons	80.00 ea		320				320	320
		3200.980	Rebar Bricks	100.00 ea		100				100	100
		3200.980	Rebar Acc: wire and acc	1.00 ls		500				500	500
		3200.980	Deck and Walk Bolster	50.00 lf		100				100	100
<b>033000</b>			<b>Concrete</b>								
	<b>014-</b>		<b>Winter Conditions for concrete and masonry</b>								
		1572.100	Winter Conditions	4.00 Mnth		8,000				8,000	8,000
		1572.100	Labor Winter conditions	1.00 ls	13,248	0				13,248	19,077
		1572.300	Snow Shovel Ground Level	8.00 mnhr	576					576	829
		1900.400	2012 Allmand Self Cont. 1M BTU Heater(In @ 4.0 gal/hr w/ 2 burners+1 gal/hr Gen running *3 24/7) (L)	4.00 Mnth		1,400		19,320	10,000	30,720	30,720
	<b>030-0363</b>		<b>Concrete stairs</b>								
		3100.124	Slab Edge Form > 1'	12.00 sf	432	36				468	658
		3100.162	Stair Edge Form	15.45 sf	278	49				327	449
		3100.162	Riser Edge Form	9.00 sf	162	28				190	262
		3100.310	Oil Wall Forms	24.00 sf	17	2				19	26
		3210.101	Drill and Epoxy #3	5.00 ea	90	26				116	156
		3310.100	4500 psi Concrete	1.00 cy		230				230	230
		3310.340	Truck Place Stair Conc	1.00 cy	154					154	222
		3310.360	Other Placement Count	1.00 ea		0				0	0
		3350.120	Finish Stairs	8.00 sf	9	0				9	12
		3350.130	Grind/Patch Walls	24.00 sf	10	2				13	17
		3350.140	Rub Walls	24.00 sf	35	24				59	74
		3350.170	CJ Prep Slab	16.00 sf	14	2				17	23
		3390.170	Liquid Curing Compounds	20.00 sf	1	2				3	4
	<b>0300-</b>		<b>Replace Curb</b>								
		2303.100	Curb and Gutter Excavation and Backfill	40.00 lf	288	80				368	495
		2305.250	Import Gravel Base	12.00 cy		622				622	622
		2305.300	Place Road Base Under Curb	12.00 cy	864					864	1,244
		3100.120	Concrete Curb and Gutter Formwork - Straight	80.00 lf	2,160	160				2,320	3,270
		3100.310	Oil Curb and Gutter Forms	80.00 sf	58	5				63	88
		3310.100	4500 psi Concrete	6.00 cy		1,380				1,380	1,380
		3310.290	Truck Place Curbs	6.00 cy	693					693	998
		3350.125	Concrete Curb and Gutter - Finish	160.00 sf	288					288	415
	<b>0302-</b>		<b>Lift Station Base slab</b>								
		3100.120	Formwork S.O.G. Edge Form < 1'	68.00 sf	857	143				1,000	1,377
		3100.310	Oil SOG Form	68.00 sf	49	4				53	75
		3100.320	Slab Void - 12" with cover board and plastic	280.00 sf	1,512	2,464				3,976	4,641
		3150.200	Nails and Hardware	68.00 sf		3				3	3
		3150.200	Dimension Lumber	68.00 sf		34				34	34
		3150.650	Finegrade Below Concrete	280.00 sf	141					141	203
		3310.100	4500 psi Concrete	10.37 cy		2,386				2,386	2,386
		3310.230	Crane Place Slab on Grade	10.37 cy	599					599	863
		3310.360	Slab Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	280.00 sf	141	3				144	206
		3390.170	Liquid Curing Compounds	280.00 sf	20	21				41	50
	<b>0302-</b>		<b>Flow Fill Dry Well</b>								
		3310.100	Flow Fill	99.00 cy		19,597				19,597	19,597
		3310.230	Crane Place Slab on Grade	99.00 cy	1,907					1,907	2,746
		3310.360	Slab Placement Count	1.00 ea		0				0	0
	<b>0302-</b>		<b>Exterior Concrete</b>								
		2305.300	Road Base Below Concrete	3.11 cy	112	172				284	334
		3100.120	Formwork S.O.G. Edge Form < 1'	26.80 sf	338	56				394	543
		3100.310	Oil SOG Form	26.80 sf	19	2				21	30
		3150.200	Nails and Hardware	26.80 sf		1				1	1
		3150.200	Dimension Lumber	26.80 sf		13				13	13
		3150.650	Finegrade Below Concrete	84.00 sf	42					42	61

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	<b>0302-</b>		<b>Exterior Concrete</b>								
		3150.720	Expansion Joint	9.38 sf	17	59				76	83
		3150.720	Expansion Joint Sealant	14.00 lf	50	74				124	146
		3210.101	Drill and Epoxy Smooth dowel	14.00 ea	252	368				620	730
		3210.104	SOG Rebar	0.26 tn	376	493				869	1,034
		3310.100	4500 psi Concrete	3.00 cy		690				690	690
		3310.230	Buggy Place Slab on Grade	3.00 cy	347					347	499
		3310.360	Slab Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	84.00 sf	42	1				43	62
		3350.160	Saw Cut S-O-G	6.00 lf	6	3		3		12	15
		3390.170	Liquid Curing Compounds	84.00 sf	6	6				12	15
	<b>0302-</b>		<b>Generator Pad</b>								
		2305.300	Road Base Below Concrete	1.19 cy	85	66				151	189
		3100.120	Formwork S.O.G. Edge Form < 1'	24.00 sf	302	50				353	486
		3100.310	Oil SOG Form	24.00 sf	17	2				19	26
		3150.194	Blockouts in Concrete	8.00 sf	101	16				117	161
		3150.200	Nails and Hardware	24.00 sf		1				1	1
		3150.200	Dimension Lumber	24.00 sf		12				12	12
		3150.625	Chamfer 3/4"	24.00 lf	43	8				51	70
		3150.650	Finegrade Below Concrete	32.00 sf	16					16	23
		3210.104	SOG Rebar	0.25 tn	360	473				833	992
		3310.100	4500 psi Concrete	2.00 cy		460				460	460
		3310.230	Truck Place Slab on Grade	2.00 cy	154					154	222
		3310.360	Slab Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	32.00 sf	16	0				16	24
		3390.170	Liquid Curing Compounds	32.00 sf	2	2				5	6
	<b>0302-</b>		<b>Overflow Vault Base Slab</b>								
		2305.300	Road Base Below Concrete	13.89 cy	500	770				1,270	1,490
		3100.120	Formwork S.O.G. Edge Form > 1'	93.60 sf	1,179	197				1,376	1,895
		3100.310	Oil SOG Form	93.60 sf	67	6				73	103
		3150.200	Nails and Hardware	93.60 sf		4				4	4
		3150.200	Dimension Lumber	93.60 sf		47				47	47
		3150.620	Keyway 4"	64.00 lf	1,152	134				1,286	1,793
		3150.650	Finegrade Below Concrete	375.00 sf	189					189	272
		3210.104	SOG Rebar	2.03 tn	2,925	3,839				6,764	8,051
		3310.100	4500 psi Concrete	16.25 cy		3,738				3,738	3,738
		3310.230	Pump Place Slab on Grade	16.25 cy	939				1,130	2,069	2,482
		3310.360	Slab Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	375.00 sf	189	4				193	276
		3390.170	Liquid Curing Compounds	375.00 sf	27	28				55	67
		3510.610	Waterstop 6" Flat	64.00 lf	230	470				701	802
	<b>0302-B</b>		<b>Vault Fill Concrete</b>								
		3100.120	Formwork S.O.G. Edge Form < 1'	10.00 sf	126	21				147	202
		3100.310	Oil SOG Form	10.00 sf	7	1				8	11
		3150.200	Nails and Hardware	10.00 sf		0				0	0
		3150.200	Dimension Lumber	10.00 sf		5				5	5
		3150.200	Acrylic Bonding Agent	150.00 sf	11	150				161	166
		3310.100	4500 psi Concrete	6.00 cy		1,380				1,380	1,380
		3310.230	Pump Place Slab on Grade	6.00 cy	347				417	764	917
		3310.360	Other Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	150.00 sf	76	2				77	110
		3350.170	CJ Prep Slab	150.00 sf	135	23				158	217
		3350.170	CJ Prep Slab	150.00 sf	135	23				158	217
		3390.170	Liquid Curing Compounds	150.00 sf	11	11				22	27
	<b>0303-</b>		<b>Lift station Grade beams</b>								
		3100.180	Job Built with Plyform 0-4'	384.00 sf	3,456	1,210				4,666	6,186
		3100.184	Haunch Wall Forms	5.00 sf	45	16				61	81
		3100.310	Oil Wall Forms	389.00 sf	280	25				305	428
		3100.320	Wall Void - 12" with cover board and wrap	48.00 sf	605	422				1,027	1,293
		3150.192	Wall Bulkhead Forms	5.36 sf	89	11				100	139
		3150.200	Nails and Hardware	389.00 sf		16				16	16

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	0303-		<b>Lift station Grade beams</b>								
		3150.200	Dimension Lumber	384.00 sf		192				192	192
		3150.620	Keyway 4"	48.00 lf	864	101				965	1,345
		3150.625	Chamfer 3/4"	96.00 lf	173	30				203	279
		3150.632	Form Ties 8"	96.00 ea		240				240	240
		3200.980	Rebar Templates	48.00 lf	86	24				110	148
		3210.101	Drill and Epoxy #5	16.00 ea	173	84				257	333
		3210.108	Rebar Formsavers # 5	96.00 ea	1,140	2,400				3,540	4,042
		3310.100	4500 psi Concrete	5.69 cy		1,309				1,309	1,309
		3310.260	Crane Place Walls	5.69 cy	329					329	473
		3310.360	Wall Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Top of Wall	32.16 sf	16	0				17	24
		3350.130	Grind/Patch Walls	389.00 sf	168	39				207	281
		3350.140	Rub Walls	384.00 sf	553	384				937	1,180
		3350.170	CJ Prep Walls	37.52 sf	34	6				39	54
		3390.170	Liquid Curing Walls	421.16 sf	15	32				47	53
	0303-		<b>Overflow Vault Walls</b>								
		1500.100	Civil Engineer Fees (Vault engineering)	1.00 ls					20,000	20,000	20,000
		3100.180	Rented Form System 8-12'	1,296.00 sf	9,331	4,082				13,414	17,519
		3100.310	Oil Wall Forms	1,296.00 sf	933	83				1,016	1,427
		3150.192	Wall Bulkhead Forms	27.00 sf	447	57				504	701
		3150.200	Nails and Hardware	1,296.00 sf		52				52	52
		3150.200	Dimension Lumber	1,296.00 sf		648				648	648
		3150.632	Form Ties 18"	324.00 ea		1,296				1,296	1,296
		3200.980	Rebar Templates	72.00 lf	130	36				166	223
		3210.104	Wall Rebar	4.50 tn	6,480	8,505				14,985	17,836
		3310.100	4500 psi Concrete	36.00 cy		8,282				8,282	8,282
		3310.260	Pump Place Walls	36.00 cy	2,080					2,504	4,584
		3310.360	Wall Placement Count	2.00 ea		0				0	0
		3350.110	Finish- Top of Wall	108.00 sf	54	1				56	79
		3350.130	Grind/Patch Walls	1,296.00 sf	560	130				689	936
		3350.170	CJ Prep Walls	135.00 sf	122	20				142	195
		3390.170	Liquid Curing Walls	1,404.00 sf	51	105				156	178
		3510.610	Waterstop 6" Flat	82.00 lf	295	603				898	1,028
	0304-		<b>Wet Well top deck</b>								
		3100.124	Shore Suspended Slab 15-up	25.00 sf	765	131				896	1,233
		3100.124	Slab Edge Form < 1'	25.00 sf	450	79				529	727
		3100.310	Oil Suspended Slab Frm	25.00 sf	18	2				20	28
		3150.194	Blockouts in Concrete	12.00 sf	151	24				175	242
		3150.200	Nails and Hardware	25.00 sf		1				1	1
		3150.625	Chamfer 3/4"	25.00 lf	45	8				53	73
		3310.100	4500 psi Concrete	1.00 cy		230				230	230
		3310.240	Crane Place Suspended Slab	1.00 cy	231					231	333
		3310.360	Slab Placement Count	1.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	25.00 sf	13	0				13	18
		3350.130	Grind and Patch Deck Bottom	25.00 sf	11	3				13	18
		3390.170	Liquid Curing Compounds	25.00 sf	2	2				4	4
	0304-		<b>Vault Top Deck</b>								
		3100.124	Shore Suspended Slab 0-15'	375.00 sf	3,375	1,969				5,344	6,829
		3100.124	Slab Edge Form > 1'	106.40 sf	1,915	319				2,234	3,077
		3100.310	Oil Suspended Slab Frm	375.00 sf	270	24				294	413
		3150.194	Blockouts in Concrete	32.00 sf	403	64				467	645
		3150.200	Nails and Hardware	375.00 sf		15				15	15
		3210.104	Suspended Slab Rebar	2.31 tn	3,325	4,363				7,688	9,151
		3310.100	4500 psi Concrete	18.47 cy		4,249				4,249	4,249
		3310.240	Pump Place Suspended Slab	18.47 cy	1,067				1,285	2,352	2,822
		3350.110	Finish- Hard Trowel	375.00 sf	189	4				193	276
		3350.130	Grind and Patch Deck Bottom	375.00 sf	162	38				200	271
		3390.170	Liquid Curing Compounds	375.00 sf	27	28				55	67
	0308-		<b>Caissons</b>								
		1900.131	Bobcat Skid Steer (85hp)- track (L)	0.25 Mnth				954	500	1,454	1,454

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	<b>0308-</b>		<b>Caissons</b>								
		1900.210	(3rd Party) Dump Truck, 10 wheel haul off 23 cy spoils	9.00 Hrs			1,080			1,080	1,080
		1900.210	(3rd Party) Dump Truck, 10 wheel haul off 6 cy concrete	3.00 Hrs			360			360	360
		2475.500	Sub - Caisson driller	1.00 ls			8,500		0	8,500	8,500
		3100.112	Formwork Sonotube 24"	16.00 lf	864	269				1,133	1,513
		3100.120	Formwork S.O.G. Edge Form > 1' Circular Slab	16.00 sf	86	34				120	158
		3150.200	Nails and Hardware	1,256.64 sf		50				50	50
		3150.200	Dimension Lumber	1,256.64 sf		628				628	628
		3150.650	Finegrade Below Concrete	12.57 sf	6					6	9
		3210.104	SOG Rebar	2.91 tn	4,189	5,497				9,686	11,529
		3310.100	4500 psi Concrete	23.27 cy		5,354				5,354	5,354
		3310.230	Pump Place Slab on Grade	23.27 cy	2,689				2,117	4,806	5,989
		3310.360	Slab Placement Count	4.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	12.57 sf	6	0				6	9
	<b>0310-</b>		<b>Pump Pads and electric pads</b>								
		3100.164	Equipment Pad Form 6"	36.00 sf	389	113				502	673
		3100.310	Oil Equipment Pad Form	36.00 sf	26	2				28	40
		3150.200	Nails and Hardware	36.00 sf		1				1	1
		3150.625	Chamfer	65.00 lf	47	20				67	88
		3210.101	Drill and Epoxy #4	65.00 ea	468	341				809	1,015
		3210.104	Misc. Pad Rebar	0.15 tn	217	286				504	599
		3310.100	4500 psi Concrete	1.20 cy		277				277	277
		3310.300	Buggy Place Equipment Pads	2.00 cy	308					308	444
		3310.360	Other Placement Count	5.00 ea		0				0	0
		3350.110	Finish- Hard Trowel	65.00 sf	33	1				33	48
		3390.170	Liquid Curing Compounds	65.00 sf	5	5				10	12
	<b>0380-</b>		<b>Concrete Equipment</b>								
		1500.100	Concrete Formwork Design Fees	1.00 ls			1,500			1,500	1,500
		1900.010	Air Compressor 185 cfm (66 HP) (L)	2.00 Mnth				2,060	1,410	3,470	3,470
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	2.00 Mnth				18,480	7,000	25,480	25,480
		3150.200	Formwork Freight	4.00 ld					6,000	6,000	6,000
		3995.100	Concrete Vibrators	3.00 Mnth				1,200		1,200	1,200
		3995.100	Generators	3.00 Mnth				1,200		1,200	1,200
		3995.100	Concrete Crane Buckets	3.00 Mnth				600		600	600
<b>042000</b>			<b>Unit Masonry Assemblies</b>								
	<b>04000 -</b>		<b>MASONRY - Sub</b>								
		4000.980	Sub - Masonry Subcontr	1.00 ls			15,246			15,246	15,246
		4090.220	Temp Shore Opening (3'-4' to 4'8")	2.00 ea	432	100				532	722
		4090.220	Temp Shore Opening (1'-4" to 3')	2.00 ea	432	100				532	722
<b>054400</b>			<b>Pre-Engineered, Pre Fabricated Cold Formed Steel Roof Trusses</b>								
	<b>05 20-</b>		<b>Trusses</b>								
		1900.300	RT Telescopic Forklift (8,000 lb) (110 HP) (L)	1.00 Mnth				2,880	1,500	4,380	4,380
		5000.985	Field Welding - Carbon Steel	16.00 hrs	576		2,400			2,976	3,229
		5001.145	Embed Plate	12.00 ea	864					864	1,244
		5050.103	Place Trusses (6 ea, 14')	84.00 lf	1,663	0				1,663	2,395
		6170.300	Truss Package Supply	1.00 ls		6,197				6,197	6,197
		6170.500	Metal Truss Bracing	24.00 ea	86					86	124
<b>055000</b>											
	<b>05 50-</b>		<b>Monorail Support System</b>								
		3150.700	Non Shrink Grout	1.00 ls		250				250	250
		5001.051	3/4" V Anchors	8.00 ea	144	0				144	207
		5120.008	Erect Steel W 8 Beams (8x10)	2.00 ea	1,152					1,152	1,659
		5120.108	Erect Steel S 8 Beams (8x23)	1.00 ea	360					360	518
	<b>05 50-</b>		<b>Purchase Misc Metals</b>								
		5001.130	Purchase Misc Metals Package	1.00 LS	36	28,000				28,036	28,052
	<b>05 55-</b>		<b>Bollards</b>								
		1900.131	CAT 299D Track Skid Steer Loader 110HP (L)	0.25 Mnth				1,144	500	1,644	1,644



Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	0212-		<b>Clear/Grub Site</b>								
		1714.100	Dump Fees by CY	350.00 cy		5,250				5,250	5,250
		1900.131	Bobcat Skid Steer (85hp)- track (L)	0.20 Mnth				763	400	1,163	1,163
		1900.132	John Deere 624 Loader (172 HP) (M)	0.20 Mnth				1,530	600	2,130	2,130
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.20 Mnth				1,848	700	2,548	2,548
		1900.210	(3rd Party) Dump Truck, 10 wheel	70.00 Hrs			8,400			8,400	8,400
		2314.100	Clear and Grub Site -Medium	0.57 ac	26					26	37
		2314.200	Strip Topsoil & Haul Offsite	350.00 cy	1,764					1,764	2,540
	0213-		<b>Site Erosion Control</b>								
		1900.131	Bobcat Skid Steer (85hp)- track (L)	0.50 Mnth				1,907	1,000	2,907	2,907
		1900.131	Bobcat Skid Steer (85hp)- track (L) w/Broom	6.00 Mnth				27,000	12,000	39,000	39,000
		2305.350	Stone @ Entrance	20.00 cy	360	1,650				2,010	2,168
		2305.350	Erosion control maintian	1.00 ls	10,224					10,224	14,723
		2370.150	Silt Fence	200.00 lf	1,080	330				1,410	1,885
		2370.150	Rock Sock	20.00 lf	360	1,100				1,460	1,618
		2800.170	Sub - Street Sweeping	1.00 ls			4,000			4,000	4,000
	0230-		<b>Grade site and spread topsoil</b>								
		1900.131	Bobcat Skid Steer (85hp)- track (L)	0.25 Mnth				954	500	1,454	1,454
		1900.132	John Deere 624 Loader (172 HP) (M)	0.25 Mnth				1,913	750	2,663	2,663
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.25 Mnth				2,310	875	3,185	3,185
		2301.100	Fine Grade Site and place topsoil	25,000.00 sy	6,300					6,300	9,072
		2305.100	Import Topsoil	310.00 cy		15,733				15,733	15,733
	0234-		<b>Excavation for Wet Well and pump station</b>								
		1222.100	Permit - Dewatering	1.00 ls					750	750	750
		1714.100	Dump Fees by CY	3,100.00 cy		18,600				18,600	18,600
		1900.131	Bobcat Skid Steer (85hp)- track (L)	1.00 Mnth				3,814	2,000	5,814	5,814
		1900.132	John Deere 624 Loader (172 HP) (M)	1.00 Mnth				7,650	3,000	10,650	10,650
		1900.136	Bobcat E85 Mini-Excavator 9.5 ton (60 HP) (L)	1.00 Mnth				4,662	2,000	6,662	6,662
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	1.00 Mnth				9,240	3,500	12,740	12,740
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	0.25 Mnth				707	125	832	832
		1900.210	(3rd Party) Dump Truck, 10 wheel	620.00 Hrs			74,400			74,400	74,400
		2240.050	Dewatering Set Up Sump	1.00 ls	144		5,000			5,144	5,207
		2240.120	2" Pump & Hoses	30.00 day	2,160	900				3,060	4,010
		2250.040	Moltz labor shoring assist	80.00 mnhr	2,880					2,880	4,147
		2250.040	Shoring System	1.00 ls			175,000			175,000	175,000
		2300.600	Precompact Subgrade Below Foundations	900.00 sy	399					399	574
		2301.100	Machine Grade Below Structure	900.00 sy	810					810	1,166
		2305.050	Clean Rock	30.00 cy		2,187				2,187	2,187
		2317.105	Excavation - Mass	3,100.00 cy	15,624					15,624	22,499
	0235-		<b>Backfill Wet Well</b>								
		1900.131	CAT 299D Track Skid Steer Loader 110HP (L)	0.50 Mnth				2,289	1,000	3,289	3,289
		1900.132	John Deere 624 Loader (172 HP) (M)	0.50 Mnth				3,825	1,500	5,325	5,325
		1900.136	Bobcat E85 Mini-Excavator 9.5 ton (60 HP) (L)	0.50 Mnth				2,331	1,000	3,331	3,331
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.50 Mnth				4,620	1,750	6,370	6,370
		1900.138	Mikasa Jumping Jack Compactor (L)	0.50 Mnth				333	50	383	383
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	0.50 Mnth				1,413	250	1,663	1,663
		2240.120	Hoses and backflow preventer	1.00 ls		5,000				5,000	5,000
		2305.100	Import Fill - Sand	2,400.00 cy		72,000				72,000	72,000
		2319.302	Backfill - Mass	2,400.00 cy	10,368					10,368	14,930
		3310.100	Flow Fill	50.00 cy			9,713			9,713	9,713
321123			<b>Crushed Aggregate Base Course</b>								
	0250-		<b>Asphalt Road</b>								
		1900.131	CAT 299D Track Skid Steer Loader 110HP (L)	0.25 Mnth				1,144	500	1,644	1,644
		1900.132	John Deere 624 Loader (172 HP) (M)	0.25 Mnth				1,913	750	2,663	2,663
		2300.600	Sub-Grade/Compact Roads	2,000.00 sy	576					576	829
		2301.100	Fine Grade/Compact Roads	2,000.00 sy	864					864	1,244
		2305.250	Import Bank Run	50.00 cy		2,450				2,450	2,450
		2339.510	Base - Roads	50.00 cy	270					270	389
		2740.840	Asphalt Subcont.	1.00 ls			35,000			35,000	35,000

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
<b>322000</b>			<b>Asphalt</b>								
	<b>0298-</b>		<b>Landscape</b>								
		1500.100	Landscape Design Fees	1.00	ls		<b>10,000</b>			10,000	10,000
		2322.020	Sub - Landscaping	1.00	ls		<b>100,000</b>			100,000	100,000
<b>330130</b>			<b>Bypass Pumping</b>								
	<b>150-01 1c 12042002</b>		<b>Site bypass pumping Memorandum</b>								
		2240.050	Bypass Set Up	1.00	ls	11,520				11,520	16,589
		15211.103	PVC Sch 80 Pipe 6" PE temp connection	20.00	lf	720				1,600	1,917
		15211.207	PVC Sch 80 6" temp connection	1.00	ea		1,000			1,000	1,000
		15211.223	PVC Sch 80 Flange Van Stone 6" Soc temp connection	1.00	ea		250			250	250
		15403.100	bypass piping Subcontractor	1.00	ls					<b>65,000</b>	65,000
		16000.001	Electrical Sub	1.00	ls					<b>10,000</b>	10,000
<b>331000</b>			<b>Slip Lining</b>								
	<b>150-01 1c 12042002</b>		<b>slip lining existing piping Memorandum</b>								
		2240.050	Setup Slipline	1.00	ls	1,152				1,152	1,659
		15403.100	Slip Liner Subcontract slip line existing piping	1.00	ls					<b>196,000</b>	196,000
		15403.100	Slip Liner Subcontractor Bond	1.00	ls					<b>4,500</b>	4,500
<b>331100</b>			<b>Pressure Pipe</b>								
	<b>150-01 1c 12042002</b>		<b>6" discharge line to forced main 1D-301-B</b>								
		2511.610	DI MEGALUG for DIP 6"	3.00	ea	216	279			495	590
		15110.650	Valve Plug Flange 125# 6in PV-140	1.00	ea	180	1,900			2,080	2,159
		15110.650	Valve Plug Flange 125# 6in PV-132	1.00	ea	180	1,900			2,080	2,159
		15112.230	DI MEGAFLANGE w/ SS Bolts for DIP 6"	1.00	ea	108	351			459	507
		15121.600	Sleeve Plastic CS-10-	1.00	ea	72	107			179	211
		15123.100	Link Seal Size LS-410-S	20.00	ea	108	440			548	596
		15125.012	NBG Kit 125# SS 6in	18.00	ea	1,296	594			1,890	2,460
		15220.610	Camlock Adapter Alum flange adapter 6"	1.00	ea	72	273			345	377
		15220.610	Camlock Cap Alum 6"	1.00	ea	72	46			118	150
		15221.010	DI Pipe 6in. dia FxF - 0ft. 6in.	1.00	ea	108	363			471	519
		15221.010	DI Pipe 6in. dia FxF - 1ft. 0in.	1.00	ea	108	363			471	519
		15221.010	DI Pipe 6in. dia FxF - 1ft. 3in.	1.00	ea	108	402			510	558
		15221.010	DI Pipe 6in. dia FxF - 1ft. 5in.	1.00	ea	108	402			510	558
		15221.010	DI Pipe 6in. dia FxF - 3ft. 0in.	1.00	ea	108	516			624	672
		15221.010	DI Pipe 6in. dia FxF - 4ft. 8in.	1.00	ea	144	668			812	875
		15221.030	DI Pipe 6in. dia FxPE - 2ft. 7in.	1.00	ea	108	516			624	672
		15221.030	DI Pipe 6in. dia FxPE - 12ft. 0in.	1.00	ea	216	2,175			2,391	2,486
		15221.430	DI Flanged 90 Ell Long 6"	5.00	ea	540	1,340			1,880	2,118
		15221.455	DI Flanged Tee 6x4"	1.00	ea	180	434			614	693
		17200.000	Instrument - Flow - Magnetic Flow Meter - 6in FE-130	1.00	ea	180	500			680	759
	<b>150-01 1c 12042002</b>		<b>4" discharge line from pumps to header 1d-301-B</b>								
		2511.610	DI MEGALUG for DIP 4"	2.00	ea	72	148			220	252
		15060.110	PS Epoxy for Anchors	2.00	ea	4	10			14	15
		15060.112	PS Epoxy Anchor 3/8 x 5in SS	36.00	ea	65	180			245	273
		15060.476	PS Strut SS 1-5/8 x 1-5/8	30.00	lf	324	480			804	947
		15060.486	PS Pipe Strut Clamp SS 2in	18.00	ea	194	144			338	424
		15110.005	Valve Air Release 2in AV-110	1.00	ea	144	1,312			1,456	1,519
		15110.005	Valve Air Release 2in AV-120	1.00	ea	144	1,312			1,456	1,519
		15110.005	Valve Air Release 2in AV-130	1.00	ea	144	1,312			1,456	1,519
		15110.014	Valve Ball Threaded SS 2in	3.00	ea	152	1,767			1,919	1,986
		15110.040	Valve Check Flange 125# 4in CV-110	1.00	ea	108	1,342			1,450	1,498
		15110.040	Valve Check Flange 125# 4in CV-120	1.00	ea	108	1,342			1,450	1,498
		15110.650	Valve Plug Flange 125# 4in PV-130	1.00	ea	108	1,900			2,008	2,056
		15110.650	Valve Plug Flange 125# 4in PV-131	1.00	ea	108	1,900			2,008	2,056
		15121.600	Sleeve Plastic CS-4-	3.00	ea	108	240			348	396

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	<b>150-01 1c</b>		<b>4" discharge line from pumps to header 1d-301-B</b>								
	12042002										
		15122.100	Core Drilled Hole - 4 -8"	3.00 ea	108	0	0			108	156
		15123.100	Link Seal Size LS-300-S	72.00 ea	389	648				1,037	1,208
		15125.012	NBG Kit 125# SS 4in	16.00 ea	288	416				704	831
		15211.201	PVC Sch 80 Cement	2.00 qt	72	88				160	192
		15211.201	PVC Sch 80 Primer	2.00 qt	72	88				160	192
		15211.221	PVC Sch 80 EPDM UNION 2"	3.00 ea	23	84				107	117
		15211.275	PVC Sch 80 LS 90 EL 2"	18.00 ea	136	72				208	268
		15211.403	PVC Sch 80 PIPE 2"	90.00 lf	680	369				1,049	1,349
		15211.417	CPVC Sch 80 MALE ADPT 2" SXMT	3.00 ea	23	51				74	84
		15212.010	Stainless Steel Nipple 2" X 3"	6.00 ea	71	138				209	241
		15221.010	DI Pipe 4in. dia FxF - Oft. 5in.	2.00 ea	144	630				774	837
		15221.010	DI Pipe 4in. dia FxF - 1ft. 8in.	1.00 ea	72	382				454	486
		15221.030	DI Pipe 4in. dia FxPE - 1ft. 3in. W/2" tap	2.00 ea	144	2,504				2,648	2,711
		15221.430	DI Flanged 90 Ell Long 4"	4.00 ea	288	696				984	1,111
		15221.455	DI Flanged Tee 4" w/ 2" tap	1.00 ea	72	760				832	864
	<b>150-01 1c</b>		<b>6" pump suction lines 1D-300-B</b>								
	12042002										
		15121.600	Sleeve Plastic CS-10-	2.00 ea	72	214				286	318
		15122.100	Core Drilled Hole - 10 -8"	2.00 ea	72	0	0			72	104
		15123.100	Link Seal Size LS-410-S	80.00 ea	432	1,760				2,192	2,382
		15125.012	NBG Kit 125# SS 4in	2.00 ea	36	52				88	104
		15125.012	NBG Kit 125# SS 6in	10.00 ea	360	330				690	848
		15221.010	DI Pipe 6in. dia FxF - 2ft. 4in.	2.00 ea	216	958				1,174	1,269
		15221.010	DI Pipe 6in. dia FxF - 16ft. 9in.	2.00 ea	2,880	3,162				6,042	7,309
		15221.425	DI Flanged 45 ell 6"	2.00 ea	144	952				1,096	1,159
		15221.430	DI Flanged 90 ell 6"	2.00 ea	144	1,072				1,216	1,279
		15221.437	DI Flanged x Flare 6"	2.00 ea	144	1,352				1,496	1,559
		15221.445	DI Flanged Con Red 6x4"	2.00 ea	144	370				514	577
	<b>150-553</b>		<b>drain in pump room Memorandum</b>								
		2511.610	DI MEGALUG for DIP 4"	1.00 ea	36	74				110	126
		15110.650	Valve Plug Flange 125# 4in	1.00 ea	144	1,900				2,044	2,107
		15112.550	Fernco Cplng w/ 2 ea SS Pipe Clamps 4"	1.00 ea	36	34				70	86
		15122.100	Core Drilled Hole - 8 -10"	1.00 ea	36	0	0			36	52
		15123.100	Link Seal Size LS-410-S	14.00 ea	76	308				384	417
		15125.012	NBG Kit 125# SS 4in	8.00 ea	144	208				352	415
		15125.012	NBG Kit 125# SS 8in	2.00 ea	72	84				156	188
		15221.010	DI Pipe 4in. dia FxF - 1ft. 0in.	1.00 ea	72	346				418	450
		15221.030	DI Pipe 4in. dia FxPE - 6ft. 0in.	2.00 ea	576	1,898				2,474	2,727
		15221.030	DI Pipe 4in. dia FxPE - 9ft. 6in.	1.00 ea	432	1,497				1,929	2,119
		15221.430	DI Flanged 90 Ell Long 4"	2.00 ea	144	348				492	555
		15221.455	DI Flanged Tee 4"	1.00 ea	72	510				582	614
		15221.455	DI Flanged Tee 6x4"	1.00 ea	144	434				578	641
		15403.160	Floor Drain 4"	1.00 ea	288	107				395	522
	<b>150-553</b>		<b>blower air line to wet well 1D-300-B</b>								
		5001.053	Epoxy Anchor 3/8 x 5in SS 304	24.00 ea	43	240				283	302
		5001.054	Epoxy for Anchors	2.00 ea	4	30				34	35
		15060.476	PS Strut SS 1-5/8 x 1-5/8	20.00 lf	216	320				536	631
		15060.486	PS Pipe Strut Clamp SS 1/4in	12.00 ea	130	84				214	271
		15122.100	Core Drilled Hole - 3 -8"	2.00 ea	72	2	0			74	106
		15123.100	Link Seal Size LS-275-S	32.00 ea	173	224				397	473
		15124.300	Grout penetration 3in	2.00 ea	18	30	0	0	0	48	56
		15212.005	Stainless Steel Pipe 1-1/4"	60.00 lf	648	1,020				1,668	1,953
		15212.010	Stainless Steel Nipple 1.25" x 3"	2.00 ea	18	40				58	66
		15212.040	Stainless Steel 90 Elbow 1-1/4"	12.00 ea	130	3,000				3,130	3,187
		15212.060	Stainless Steel Union 1-1/4"	2.00 ea	22	800				822	831
		15220.120	Rubber Blower hose 1-1/4" x 50'	2.00 ea	288	1,000				1,288	1,415
		15220.501	Hose Clamp SS Worm 1-1/4	4.00 ea	14	20				34	41
	<b>150-610</b>		<b>Pipe Supports &amp; Hangers Memorandum</b>								
		15233.405	Supply Support package 13 supports	1.00 ls		13,635				13,635	13,635



Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
<b>333100</b>			<b>Gravity Pipe</b>								
	<b>02610-</b>		<b>overflow line to emergency tank 1D-302-A</b>								
		1900.132	John Deere 624 Loader (172 HP) (M)	0.01 Mnth	0	0		84	33	117	117
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.01 Mnth				102	39	140	140
		1900.138	Mikasa Jumping Jack Compactor (L)	0.01 Mnth	0			4	1	5	5
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	0.01 Mnth	0			17	3	20	20
		2305.200	Utility Bedding Peastone	2.62 cy	94	167				262	303
		2333.010	Trench Excavtion 12-14'	25.00 lf	225					225	324
		2333.020	Trench Backfill 12-14'	25.00 lf	270					270	389
		2333.060	Spoils to Waste	2.78 cy	10					10	14
		2336.110	PVC Sch 80 Pipe 8 Bell End	25.00 lf	149	1,050				1,199	1,264
		2336.120	PVC Sch 80 22 bend 8 SOC	2.00 ea	18	500				518	526
		2336.180	PVC Sch 80 Coupling 8" SOC	1.00 ea	9	150				159	163
		2336.270	PVC C-160 Wye 8 x 6	1.00 ea	36	650				686	702
		2336.320	PVC C-900 45 bend 6	1.00 ea	36	250				286	302
		2511.050	DI Joint Restraint - 6"	2.00 ea	72	900				972	1,004
		2511.522	DI RJ Compact Solid Sleeve Long 6	4.00 ea	144	2,364				2,508	2,571
		2511.610	DI MEGALUG for DIP 6"	4.00 ea	144	372				516	579
		15112.550	Fernco Cplng w/ 2 ea SS Pipe Clamps 6"	1.00 ea	36	38				74	90
		15122.100	Core Drilled Hole - 12 -8"	2.00 ea	72	2	0			74	106
		15123.100	Link Seal Size LS-475-S	48.00 ea	259	1,104				1,363	1,477
		15150.120	CISP Cleanout 6-NH-W/PLUG-5A	1.00 ea	108	136				244	292
		15211.118	PVC Sch 40 Adapter Socket x FIPT 6	1.00 ea	36	200				236	252
	<b>150-55 40</b>		<b>vent off wet well 1D-302-A</b>								
		2327.120	Manhole Vent cover for wet well	1.00 ea	144	500				644	707
		15060.450	PS Riser Clamp SS 6	1.00 ea	36	58				94	110
		15122.100	Core Drilled Hole - 10 -8" for vent	1.00 ea	36	0	0			36	52
		15123.100	Link Seal Size LS-475-S	20.00 ea	108	460				568	616
		15211.103	PVC Sch 80 Pipe 6" PE	20.00 lf	151	880				1,031	1,098
<b>333900</b>			<b>Utility Structures</b>								
	<b>026-1-</b>		<b>precast Emergency vault and vent 1D-302-A</b>								
		2327.005	Supply Precast	1.00 ls		30,000				30,000	30,000
		2327.010	Manhole 4' Riser	16.00 vf	1,267	0				1,267	1,825
		2327.010	Manhole 24" x 36" Flat Cover	2.00 ea	72	0				72	104
		2327.120	Manhole Vent cover	1.00 ea	72	500				572	604
		15060.450	PS Riser Clamp SS 6	1.00 ea	36	58				94	110
		15122.100	Core Drilled Hole - 10 -8"	1.00 ea	36	0	0			36	52
		15123.100	Link Seal Size LS-475-S	10.00 ea	54	230				284	308
		15211.615	PVC Sch 40 DWV Pipe 6"	20.00 lf	94	880				974	1,015
		15211.630	PVC DWV 90 Ell HxH 6	4.00 ea	220	1,000				1,220	1,317
	<b>02632-</b>		<b>storm 30" RCP replacement 1CS-100-B</b>								
		1166.100	Testing	2.00 ea	576				2,000	2,576	2,829
		1900.132	John Deere 624 Loader (172 HP) (M)	0.07 Mnth	0	0		528	207	735	735
		1900.136	Komatsu PC300 Excavator (232 HP) (L)	0.07 Mnth				638	242	879	879
		1900.138	Mikasa Jumping Jack Compactor (L)	0.03 Mnth	0			23	3	26	26
		1900.138	Wacker/Rammer Pad Foot Trench Roller (L)	0.03 Mnth	0			96	17	113	113
		2305.200	Utility Bedding Peastone	12.59 cy	378	806				1,184	1,350
		2327.010	Manhole 4' Riser	12.00 vf	864	0				864	1,244
		2327.010	Manhole 4' Riser	12.00 vf	864	0				864	1,244
		2327.010	Manhole 4' Riser	12.00 vf	864	0				864	1,244
		2327.010	Manhole 4' Flat Cover	3.00 ea	216	0				216	311
		2327.090	Manhole Boots 30"	6.00 ea	432	0				432	622
		2327.090	Grout Pipe in Manhole 30"	3.00 ea	864	600				1,464	1,844
		2333.010	Trench Excavtion 10-12'	85.00 lf	1,071					1,071	1,542
		2333.010	Pot Hole Existing	2.00 ea	288		10,000			10,288	10,415
		2333.010	Cross Existing	2.00 ea	144	200				344	407
		2333.010	Cut Existing	2.00 ea	144					144	207
		2333.010	Tie to Existing	2.00 ea	144	100				244	307
		2333.020	Trench Backfill 10-12'	85.00 lf	1,530					1,530	2,203
		2333.060	Spoils to Waste	22.22 cy	80					80	115

Spec #	Assembly	Phase	Description	Takeoff Quantity	Labor Amount	Material Amount	Sub Amount	Equip Amount	Other Amount	Total Amount	Grand Total
	02632-		<b>storm 30" RCP replacement 1CS-100-B</b>								
		2632.103	RCP Class III O-Ring Joint 30	160.00 lf	2,880	9,483				12,363	13,630
<b>410000</b>											
	14-01		<b>Hoists</b>								
		3150.700	Load Tests	1.00 ls	288	0				288	415
		14600.100	Sub - Hoists - 3 Ton	1.00 ls			8,023			8,023	8,023
<b>432313</b>			<b>Self Priming Centrifugal Pumps</b>								
	11-01		<b>lift station pumps 1 &amp; 2 1D-100-B</b>								
		11000.005	Start up and Training	8.00 mnhr	288	0				288	415
		11000.005	Misc Materials	2.00 ea	72	500				572	604
		11000.005	Anchors for Equipment	8.00 ea	72	240				312	344
		11000.005	Grout Equipment	16.00 cf	1,152	960				2,112	2,619
		11000.005	Pressure Gauge Assembly	2.00 ea	288	3,500				3,788	3,915
		11700.020	Supply Pump Package and blower	1.00 ls		86,635				86,635	86,635
		11700.080	self Priming centrifugal pump - 7.5 HP P-110 & P120	2.00 ea	2,304					2,304	3,318
	11-09		<b>Aeration blower AER-1 1D-100-B</b>								
		11000.005	Start up and Training	4.00 mnhr	144	0				144	207
		11000.005	Misc Materials	1.00 ea	36	500				536	552
		11000.005	Anchors for Equipment	4.00 ea	36	120				156	172
		11000.005	Spare Parts	1.00 ls		500				500	500
		11100.020	Control Panel	1.00 ea	288	0				288	415
		11100.020	Blower Misc -	1.00 ea		500				500	500
		11100.045	aeraton blower 1 1/2 hp FPZ SCL R20-MD	1.00 ea	576	0				576	829
		15060.475	stand/ support for blower	1.00 ea	72	300				372	404



CONSULTING AGREEMENT BY BETWEEN THE CITY AND COUNTY OF BROOMFIELD AND  
BURNS & MCDONNELL ENGINEERING COMPANY, INC. FOR CONSTRUCTION ADMINISTRATION  
AND ENGINEERING SERVICES RELATED TO THE BROOMFIELD'S SITE APPLICATION PROJECT:  
SUNRIDGE LIFT STATION

1. PARTIES. The parties to this Agreement are The City and County of Broomfield, a Colorado municipal corporation and county, (the "City") and Burns & McDonnell Engineering Company, Inc., a Missouri corporation, (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 a project called Site Application Project: Sunridge Lift Station (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 and advise the City as the City requires in Exhibit A or elsewhere in this Agreement 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 and elsewhere in this Agreement.
    - 3.1.3. *Extra Services.* Upon the express, written consent 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. *Documents.* All drawings, computer programs, computer input and output, analyses, plans, photographic images, tests, maps, surveys, electronic files, and written material of any kind required to be generated by the Agreement for the performance of this Agreement or required to be developed by the Consultant specifically for the Project are and shall remain the sole and exclusive property of the City. All such documents and electronic files prepared by Consultant pursuant to this Agreement are instruments of service in respect of the Services specified herein. Such documents and electronic files are not intended or represented to be suitable for reuse by the City or others in extensions of the project beyond that contemplated in the Agreement. Any reuse, extension, or completion by the City or others will be at the City's sole risk and without liability or legal exposure to Consultant. The Consultant shall not provide copies of any such material to any other party without the prior written consent of the City. Rights to Consultant's intellectual property developed, utilized or modified in the performance of the Services, but not created as a specific requirement of this Agreement, shall remain the property of Consultant. Consultant grants to the City a royalty-free, irrevocable, worldwide, nonexclusive, perpetual license to use such intellectual property to use in connection with the associated with the Project and related facilities. Consultant grants to the City a royalty-free, irrevocable, worldwide, nonexclusive, perpetual license, to use, disclose, reproduce, sublicense, modify, or prepare derivative works from such intellectual property as needed to maintain, modify or improve the facilities associated with the Project. Such use, reproduction, or modification by the City or others will be at the City's sole risk and without liability or legal exposure to Consultant.

- 3.1.5. *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.
- 3.1.6. *Completion Date.* The Consultant shall complete the services of this Agreement within 365 days following the date of the authorization to Proceed. Additionally, the Consultant shall meet the midterm milestones outlined in Exhibit A.
- 3.2. Obligations of the City.
- 3.2.1. *General.* The City shall 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. Except as may be agreed upon in writing by the City and the Consultant, the Consultant shall follow the time schedule shown in Exhibit A.
- 3.3.3. If due to Acts of God, public emergency, changes in scope, 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 authorized in writing, the amount paid by the City to the Consultant under this Agreement will not exceed the amount shown in subparagraph 3.4.2 below. 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. The total amount shall not exceed **\$341,184**, including reimbursables in accordance with the rates set forth in Exhibit A.
- 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. The Consultant, its employees, subcontractors, and agents shall maintain all books, documents, papers, and accounting records related hereto, and all information regarding costs incurred herein, at their offices during the contract period and for three years thereafter.
- 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 in advance of the termination date. The termination notice shall specify in reasonable detail each such material breach and shall provide each party ten (10) days to cure the breach (or if such breach cannot be cured within ten (10) days, then the breaching party shall begin to cure such breach within three (3) days and continue to diligently pursue such cure until cured. If such breach is not reasonably subject to cure, such notice of termination shall be immediately affected upon receipt of the written notice. If this Agreement is so terminated by the Consultant, the Consultant will be paid for all services rendered up to the date of the termination. If this Agreement is so terminated by the City, the Consultant shall promptly deliver to the City all Documents as defined in Section 3.1.4 that are 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.
- 3.5.2. *Without Cause.* In addition to the foregoing, this Agreement may be terminated by the City for its convenience and without cause of any nature by giving the Consultant written notice at least seven days in advance of the termination date. In the event of such termination, the Consultant will be paid for all services satisfactorily performed 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 Documents as defined in Section 3.1.4 that are 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.
- 3.6. 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 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 applicable federal and state laws and local ordinances and regulations in performance of its services that relate to Consultant's services performed hereunder, and shall observe and comply with such applicable existing laws, ordinances, and regulations.
- 3.8. Permits and Licenses. The Consultant shall procure all permits and licenses required by Exhibit A, and pay all related charges, fees and taxes and give all related notices necessary and incidental to such permits and licenses.
- 3.9. Patented Devices, Materials, and Processes. The Consultant shall hold and save harmless the City from any and all claims for infringement, to the extent caused by reason of the Consultant's (or its subconsultant's use of any tier or their respective employees) misappropriation or misuse 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 such infringement, at any time during the prosecution or after completion of the work.

3.10. Liability and Indemnification.

- 3.10.1. *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.
- 3.10.2. *Indemnification.* The Consultant shall indemnify and hold harmless the City and its agents and employees from and against 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 subcontractor 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 3.10.2. 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.
- 3.10.3. *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 subcontractor 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 3.10.2 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 subcontractor under Workers' Compensation Act of Colorado or other employee benefit legislation.
- 3.10.4. NEITHER CONSULTANT NOR THE CITY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL LOSSES OR DAMAGES, WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO LOSSES OF USE, ANTICIPATED PROFITS, BUSINESS, REPUTATION OR FINANCING.

3.11. Insurance.

- 3.11.1. *Purchase and Maintain Insurance.* Consultant shall purchase and maintain insurance of the kind, in the amounts, and subject to the conditions specified herein in the Exhibit B. However, insurance requirements contained in this Agreement shall not be deemed to limit or define obligations of the Consultant as provided elsewhere in this agreement, and the Consultant should rely on its experience to obtain additional insurance coverage needed for the City and the Consultant in its performance hereunder.
- 3.11.2. *Coverage.* Said insurance shall be maintained in full force and effect during the term of this Agreement and shall protect the Consultant, its employees, subcontractors, 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.
- 3.11.3. *Valuable Papers.* Furthermore, the Consultant shall carry valuable papers insurance in an amount sufficient for 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.

3.11.4. *Certificates*. Certificates showing the Consultant is carrying the above-described insurance shall be furnished to the City within fifteen calendar days after the date on which this Agreement is made. Other than Workman's Compensation and Professional Liability, such certificates shall provide that the City is included as an additional insured and that the insuring company will provide thirty-day written notice prior to any alteration or cancellation of the above-described insurance.

3.12. 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:

3.12.1. The City designates Ronda Jo Ackerman Alford as the authorized representative of the City under this Agreement. Email address is [ralford@broomfield.org](mailto:ralford@broomfield.org).

3.12.2. The Consultant designates Brian Knadle as the authorized representative of the Consultant under this Agreement. Email address is [bknadle@burnsmcd.com](mailto:bknadle@burnsmcd.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).

4. ASSIGNMENT. This Agreement shall not be assigned by a Party without the prior written consent of the other Party.
5. EXHIBITS. All exhibits referred to in this Agreement are by reference incorporated herein for all purposes.
6. 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.
7. PARAGRAPH CAPTIONS. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit, or describe the scope or intent of this Agreement.
8. 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.
9. 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. If any other provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.
10. DEFAULT. Time is of the essence. If any payment or any other condition, obligation, or duty is not timely made, tendered, or performed by either Party, then this Agreement, at the option of the Party who is not in default, may be terminated by the non-defaulting Party, after ten days written notice and an opportunity to cure, in which case, the non-defaulting Party may recover such damages as may be proper. If the non-defaulting Party elects to treat this Agreement as being in full force and effect, the non-defaulting Party shall have the right to an action for damages.



11. WAIVER OF BREACH. 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.
12. 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.
13. 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.
14. 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.
15. EXECUTION IN COUNTERPARTS; 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. The Parties approve the use of electronic signatures for execution of this Agreement. All documents must be properly notarized, if applicable.
16. INDEPENDENT CONTRACTOR. **The Consultant is an independent contractor as described in section 8-40-202(2), C.R.S., and is not entitled to workers' compensation benefits and, further, is obligated to pay federal and state income tax on monies earned pursuant to this Agreement.**
17. 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.
18. 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.
19. 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.
20. 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.
21. EXECUTION REQUIRED. This Agreement shall not be binding upon any Party hereto unless and until the Parties have executed this Agreement.
22. 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.
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 section 24-11-101(1), C.R.S., such day shall be extended until the next day on which such banks and state offices are open for the transaction of business.

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. PARTIES NOT PARTNERS. Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint venturers, and neither Party shall be responsible for any debt or liability of the other Party.
26. 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.
27. 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. 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.

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

Consulting Agreement for Construction Administration and Engineering Services for the Site  
Application Project: Sunridge Lift Station  
Burns & McDonnell Engineering Co., Inc.

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

APPROVED AS TO FORM:

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

Consulting Agreement for Construction Administration and Engineering Services for the Site  
Application Project: Sunridge Lift Station  
Burns & McDonnell Engineering Co., Inc.

Burns & McDonnell, Inc. a Missouri corporation

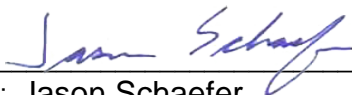
By:   
Name: Jason Schaefer  
Its: Regional GP Manager

EXHIBIT A  
Scope of Services and Fees

## Attachment A – CONSTRUCTION PHASE SERVICES:

Burns & McDonnell Engineering Company, Inc. (Consultant) offers the following scope of services to provide construction administration and project closeout services for improvements being made to the Sunridge Lift Station for the City & County of Broomfield (Owner). This scope of services includes construction phase support and construction observation by the Consultant. One Contractor will be hired by the OWNER under a CMAR delivery contract to construct the improvements to the Lift Station.

Issued for Bid (IFB) drawings and specifications are completed under a separate amendment between Consultant and Owner. The services covered in this amendment begin post-IFB.

The construction phase services fee estimate is based on the following scope items, should any of the scope items change this will be considered supplemental services and require an amendment:

- ▶ Construction Duration (11 Months)
  - Should construction duration exceed eleven (11) months, additional construction phase services costs will be covered with an additional amendment.
- ▶ Issued for Construction design documents
- ▶ Progress Meetings
- ▶ Construction Kickoff Meeting
- ▶ Compliance Submittals
- ▶ RFI Review & Response
- ▶ Change Orders / Work Change Directives
- ▶ Work Compliance Site Visits
- ▶ Construction Observation
- ▶ Contract Administration
- ▶ Final Inspection
- ▶ CDPHE Certification
- ▶ Conforming to Construction Record Drawings

## Task Series 100 – Construction Administration Services

The Scope of Services described herein represents the Consultant's professional engineering activities to support the construction administration and construction observation of infrastructure associated with the Lift Station to be delivered through a CMAR delivery approach.

Consultant's presence will in no way relieve construction contractors of their obligations for complete compliance with the drawings and specifications. Consultant shall not make exhaustive or continuous on-site inspections to check the quality or quantity of such work. Consultant shall not be responsible for the means, methods, techniques, sequences, or procedures of construction contractors, or for their safety precautions and programs incident to their work. Consultant shall not be responsible for the failure of construction contractors to perform the work in accordance with the Contract Documents.

Insofar as job site safety is concerned, Consultant is only responsible for its employees' activities on the job site, and this shall not be construed to relieve Owner or any construction contractors from their responsibilities for maintaining a safe job site. Neither the professional activities of Consultant, nor presence of Consultant or its employees and subcontractors shall be construed to imply Consultant has any responsibility for methods of work performance, superintendence, sequencing of construction, or safety in, on or about the job site. Owner agrees that the construction contractors are solely responsible for job site safety, and this intent shall be made evident in Owner's agreement with all construction contractors. Owner and Consultant shall be made additional insureds under the construction contractors' general liability insurance policy.

Consultant will not be a party to any construction contract and all authority and responsibility to stop work belongs to the Owner. Consultant shall not be liable for the results of any interpretations or decisions rendered by it in good faith when acting as an arbitrator or interpreter of the Contract Documents; provided, however, that all interpretations and decisions of Consultant shall be consistent

**Consulting Agreement for Construction Administration and Engineering Services for the Site  
Application Project: Sunridge Lift Station  
Burns & McDonnell Engineering Co., Inc.**

with the intent of, and reasonably inferable from, the Contract Documents and shall be in writing or in the form of drawings.

By recommending any payment to others, Consultant will not thereby be deemed to have represented that continuous or exhaustive examinations have been made by Consultant to check the quality or quantity of the work or to review the means, methods, sequences, techniques or procedures of construction or safety precautions or programs incident thereto or that Consultant has made an examination to ascertain how or for what purposes any person(s) has used the moneys paid on account, or that title to any of work, materials or equipment has passed to the Owner free and clear of any lien, claims, security interests or encumbrances, or that others have completed their work exactly in accordance with the Contract Documents. Notwithstanding the foregoing, it is agreed that, by recommending any payment to others, Consultant does thereby represent that, based on Consultant's evaluation of the work and the data comprising the Contractor's Application for Payment, that, to the best of Consultant's knowledge, information and belief, the work has progressed to the point indicated, the quality of the work is in accordance with the Contract Documents, that the Contractor is entitled to payment in the amount certified, and that Consultant knows of no legitimate reason that such payment or any part thereof may or should be withheld.

Provide construction contract administration services as indicated below:

#### **Task 101 – Progress Meetings**

Consultant will prepare for and attend weekly progress meetings (36 in total) to consult with the Owner and CMAR during the construction period relative to general administration of the construction. Approximately one quarter of the construction meetings will be in person, and the rest will be virtual.

#### **Task 102 – Construction Kickoff Meeting**

Consultant will schedule a kickoff meeting with the contractor. The kick-off meeting will address scope, communication approach, compliance submittal schedule and responsibilities of each participant. The kickoff meeting will be attended by the Consultant's Project Manager, Project Engineer, Owner, and Contractor.

#### **Task 103 – Issued for Construction Design Documents**

Engineer will update the project manual and contract drawings with comments from the CMAR Contractors made during the project kick off meeting and subsequent workshops in the development of the Guaranteed Maximum Price (GMP). Updates will also include any changes from the Owner's 90% Review meetings. Paper and electronic "Issued for Construction" (IFC) documents will be provided to the CMAR Contractors and Owner.

#### **Task 104 – Compliance Submittals**

Consultant will review and approve (or take other appropriate action in respect of) Shop Drawings, Samples, and other submittals and data required to ascertain their general accordance with the Contract Documents. This fee accounts for a total of 130 submittals and resubmittals.

#### **Task 105 – RFI Review & Response:**

Consultant will review and respond to RFIs in writing and prepare and issue supplemental drawings and specifications as necessary in response to RFIs. Consultant will maintain an orderly record of RFIs, responses provided to the Contractor, and documentation of the RFI's resolution. This fee accounts for a total of 20 RFIs.

#### **Task 106 – Change Orders / Work Change Directives:**

Consultant will review and comment on prospective change orders. Consultant will evaluate and make recommendations to Owner on change orders when appropriate. Consultant will provide Work Change Directives (no cost design changes) as needed. Consultant will track changes and obtain Owner approval prior to returning direction to the Contractor.

### **Task 107 – Work Compliance Site Visits**

Specific discipline engineers may visit the site as required to observe critical events or progress. Contractor to hire a certified third-party agent to perform all special inspections for the project. Consultant will review special inspection reports as submittals.

The Contractor and Owner will be responsible for materials testing. This will include density testing of subgrade, concrete materials testing and verification of properties, grout materials testing and verification of properties.

### **Task 108 – Construction Observation**

Consultant will provide a part-time RPR on-site during the construction phase (4 hours per week), for a total of 11 months of the anticipated 11 month construction period, or 176 observation hours. If more observation time is required, additional time can be added through an amendment.

Specific tasks included within the Construction Observation and Resident Project Representative include the following services:

- ▶ Observe the progress and quality of the work as is reasonably necessary at various stages of construction to determine if the work is proceeding in general accordance with the Contract Documents. Keep the Owner informed about the progress and quality of the portion of the Work completed.
- ▶ Review and monitor the progress schedule, schedule of Shop Drawing and other submittals prepared by Contractor and take necessary and appropriate action concerning acceptability.
- ▶ Verify that tests, equipment, and systems start-ups and operating and maintenance training are conducted in the presence of appropriate personnel.

## **Task Series 200 – Project Closeout**

### **Task 201 – Final Completion Site Walk**

The Consultant will conduct a final completion site walk and issue a final Certificate for Payment indicating that Work complies with the requirements of the Contract Documents. Consultant will supply the Contractor and Owner with punchlist items identified during final inspection.

### **Task 202 – CDPHE Certification**

The Consultant will issue CDPHE Certification of completion per approved design and/or work through changes to assist Owner with final approval from CDPHE for plant construction.

### **Task 203 – Conforming to Construction Record Drawings**

Consultant will prepare conforming to construction record drawings of the constructed facilities. The final set of record drawings furnished will be "Revised According to Construction Records" in accordance with records provided by the Contractor. Consultant will issue an electronic copy of the Draft and Final Conforming to Construction Record drawings.



Consulting Agreement for Construction Administration and Engineering Services for the Site  
Application Project: Sunridge Lift Station  
Burns & McDonnell Engineering Co., Inc.

City & County of Broomfield

Sunridge LS - Construction Phase Services

Project Manager	Project Engineer	Electrical / I&C	Civil	Process	Structural	Architectural	Mechanical	CA&D	Project Controls	Field Representation	Quality Control
Andrew Tuh	Ryan McDermid	Verna Pavesi	Matt Strabel	Grady Cole	John Kienholz	Ryan Lang	David Olson	Varies	Josh Demko	Ryan McDermid	Sten Youde

Task Refers To	Construction Administration Services
Task 121	Progress Meetings
Task 122	Contributor Kickoff Meeting
Task 123	Issued for Construction Design Documents
Task 124	Compliance Submittals
Task 126	RFI Review & Response
Task 126	Change Orders / Work Change Directives
Task 127	Work Compliance Site Visits
Task 128	Construction Observation
<b>Task Subtotal</b>	
<b>Task Refers To</b>	
Task 201	Final Inspection
Task 202	CCPME Certification
Task 203	Conforming to Construction Record Drawings
<b>Task Subtotal</b>	
<b>Project Total</b>	

Task Refers To	Construction Administration Services	Electrical / I&C	Civil	Process	Structural	Architectural	Mechanical	CA&D	Project Controls	Field Representation	Quality Control
Task 121	Progress Meetings	44	66						8		
Task 122	Contributor Kickoff Meeting	4	4								
Task 123	Issued for Construction Design Documents	2	4	4	20	20	4	2	20		2
Task 124	Compliance Submittals	4	60	24	50	60	40	24			
Task 126	RFI Review & Response	20	40	40	5	40	40	20	10		2
Task 126	Change Orders / Work Change Directives	20	20	8	4	8	8	4			2
Task 127	Work Compliance Site Visits	20	40	8	4	20	54	8	4		
Task 128	Construction Observation					20				176	
<b>Task Subtotal</b>		<b>114</b>	<b>254</b>	<b>74</b>	<b>61</b>	<b>188</b>	<b>80</b>	<b>44</b>	<b>20</b>	<b>8</b>	<b>8</b>
<b>Task Refers To</b>											
Task 201	Final Inspection	4	4	4	4	4	4	4			
Task 202	CCPME Certification	1	4								1
Task 203	Conforming to Construction Record Drawings	2	16	8	4	8	4	40			2
<b>Task Subtotal</b>		<b>7</b>	<b>24</b>	<b>12</b>	<b>8</b>	<b>12</b>	<b>8</b>	<b>40</b>	<b>8</b>	<b>0</b>	<b>3</b>
<b>Project Total</b>		<b>121</b>	<b>258</b>	<b>152</b>	<b>49</b>	<b>190</b>	<b>88</b>	<b>52</b>	<b>60</b>	<b>8</b>	<b>9</b>

Task Refers To	Total Hours	Total Cost	Expenses	Subcontracts	Subtotal
Task 121	110	\$ 28,500	\$ 2,000	\$ -	\$ 26,500
Task 122	4	\$ 1,000	\$ 200	\$ -	\$ 800
Task 123	2	\$ 18,425	\$ 750	\$ -	\$ 17,675
Task 124	4	\$ 60	\$ 3,900	\$ -	\$ 3,960
Task 126	20	\$ 53,477	\$ 2,150	\$ -	\$ 51,327
Task 126	20	\$ 20,110	\$ 804	\$ -	\$ 19,306
Task 127	20	\$ 39,227	\$ 2,851	\$ -	\$ 36,376
Task 128	176	\$ 39,268	\$ 2,175	\$ -	\$ 37,093
	8	\$ -	\$ -	\$ -	\$ -
<b>Task Subtotal</b>	<b>124</b>	<b>\$ 248,362</b>	<b>\$ 10,276</b>	<b>\$ -</b>	<b>\$ 238,086</b>
<b>Task Refers To</b>					
Task 201	4	\$ 8,000	\$ 201	\$ -	\$ 7,799
Task 202	1	\$ 1,301	\$ 83	\$ -	\$ 1,218
Task 203	2	\$ 19,727	\$ 760	\$ -	\$ 18,967
	8	\$ -	\$ -	\$ -	\$ -
<b>Task Subtotal</b>	<b>14</b>	<b>\$ 29,028</b>	<b>\$ 1,044</b>	<b>\$ -</b>	<b>\$ 27,984</b>
<b>Project Total</b>	<b>138</b>	<b>\$ 324,651</b>	<b>\$ 16,534</b>	<b>\$ -</b>	<b>\$ 341,184</b>

## Schedule of Hourly Professional Service Billing Rates

Position Classification	Classification Level	Hourly Billing Rate
General Office *	5	\$74.00
Technician *	6	\$94.00
Assistant *	7	\$114.00
	8	\$156.00
	9	\$186.00
Staff *	10	\$211.00
	11	\$231.00
Senior	12	\$261.00
	13	\$283.00
Associate	14	\$291.00
	15	\$293.00
	16	\$296.00
	17	\$298.00

**NOTES:**

1. Position classifications listed above refer to the firm's internal classification system for employee compensation. For example, "Associate", "Senior", etc., refer to such positions as "Associate Engineer", "Senior Architect", etc.
2. For any nonexempt personnel in positions marked with an asterisk (\*), overtime will be billed at 1.5 times the hourly labor billing rates shown.
3. For outside expenses incurred by Burns & McDonnell, such as authorized travel and subsistence, and for services rendered by others such as subcontractors, the client shall pay the cost to Burns & McDonnell plus 10%.
4. Monthly invoices will be submitted for payment covering services and expenses during the preceding month. Invoices are due upon receipt. A late payment charge of 1.5% per month will be added to all amounts not paid within 30 days of the invoice date.
5. The services of contract/agency and/or any personnel of a Burns & McDonnell parent, subsidiary or affiliate shall be billed to Owner according to the rate sheet as if such personnel is a direct employee of Burns & McDonnell.
6. The rates shown above are effective for services through December 31, 2024, and are subject to revision thereafter.

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.	<p><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.</p> <p><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></p>	<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.	<p><b>Automobile Liability</b> Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</p>	<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.	<p><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.</p> <p>This requirement shall not apply if exempt under Colorado Workers' Compensation Act, AND when providing the sole proprietor waiver form.</p>	<p>Employer's Liability with Minimum Limits:</p> <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.	<p><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:</p> <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>	<p>Minimum Limit:</p> <ul style="list-style-type: none"> <li>● \$1,000,000 Per Claim</li> <li>● \$2,000,000 General 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, 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)



**D. Proposed Resolution for an IGA with Adams County Community Corrections Program**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6D.
Presented By	
Enea Hempelmann, Chief of Police	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#)

[View Presentation](#)

The City and County of Broomfield currently participates on the Adams County Community Corrections Board through an Intergovernmental Agreement (IGA) originally adopted by the City Council in 2001. The current agreement expires on December 31, 2024. It is requested that the City Council renew the IGA for another three-year term. A copy of the proposed agreement is attached. Proposed Resolution No. 2024-141 would renew the intergovernmental agreement with Adams County for a three-year term, expiring December 31, 2027, and affirms appointments of Police Commander Dave Walts and Judge Amy Bockman to the Board as Broomfield's representatives.

### **Attachments**

[Memo for Adams County Community Corrections Program IGA Res. No. 2024-141 .pdf](#)

[Resolution 2024-141 IGA with Adams County for Participation in Community Corrections Board.pdf](#)

[Updated Draft Broomfield IGA Renewal 25-27 - approved edits \(1\).pdf](#)

## Summary

### [View Correspondence](#)

The City and County of Broomfield currently participates on the Adams County Community Corrections Board through an Intergovernmental Agreement (IGA) originally adopted by the City Council in 2001. The current agreement expires on December 31, 2024. It is requested that the City Council renew the IGA for another three-year term. A copy of the proposed agreement is attached.

Section 17-27-101 C.R.S. (Colorado Revised Statutes) provides for the establishment of community corrections programs that present the courts with alternative sanctions for individuals who would otherwise be incarcerated in prison. Community corrections facilities, otherwise known as "halfway houses," serve individuals who are in transition between prison and parole, but may also house individuals convicted of less severe offenses who are diverted from prison. The goal is to successfully reintegrate offenders back into society.

Funding for the facilities is provided by the State of Colorado 17th Judicial District, Colorado Department of Corrections, and other funding such as private pay and offense-specific funding. Broomfield does not provide any funding for the facilities.

Community Corrections Boards (CCBs) are responsible for the administration of community corrections programs, monitoring halfway houses for compliance to standards and contract obligations, and reviewing offender cases referred for community corrections placement. There were 189 clients referred from Broomfield over the last two-year period (2022 and 2023) for supervision in these programs. They comprise approximately 4.37% percent of the 17th Judicial District's total community corrections population.

Adams and Broomfield Counties are both in the state's 17<sup>th</sup> Judicial District. The 17<sup>th</sup> Judicial District's CCB consists of ten members, including two representatives from Broomfield, representatives from Adams County as well as representatives from the Adams County Sheriff's Department, the 17<sup>th</sup> Judicial District Probation Office, the Public Defender's Office, and service providers. Broomfield's Police Commander David Walts and Judge Amy Bockman currently serve as Broomfield's representatives to the Board. Should Judge Bockman or Commander Walts no longer be able to serve on the Board, the City and County Manager or designee is authorized to approve a replacement Board representative when needed.

Staff recommends the renewal of the proposed IGA to avoid duplicated efforts, which could be necessary on the part of individual counties should the joint CCB be dissolved.

Adams County Commissioners will also be considering the renewal of the IGA at an upcoming meeting. All indications are that they desire to renew the agreement.

Proposed Resolution No. 2024-141 would renew the intergovernmental agreement with Adams County for a three-year term, expiring December 31, 2027, and affirms appointments of Police Commander David Walts and Judge Bockman to the Board as Broomfield's representatives. Under provisions of the Broomfield Charter, an intergovernmental agreement requires an affirmative vote of two-thirds of the entire Council.

## Financial Considerations

No financial impacts from this IGA.

## Prior Council or Other Entity Actions

Broomfield originally entered into the IGA in 2001, and has renewed it, most recently in 2021, with [Resolution 2021-191](#).

The last appointment to the Board took place in January 2024, with Resolution No. 2023-137, which affirmed the appointment of Judge Amy Bockman and reaffirmed the appointment of Police Commander David Walts to the Board.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to proceed with the Community Corrections IGA and the appointment of the Board representatives, the appropriate motion is...

**That Resolution 2024-141 be adopted.**

## Alternatives

The Council may choose not to renew the IGA and direct staff to pursue establishing a separate Community Corrections Board.

# RESOLUTION NO. 2024-141

A resolution approving the renewal of an Intergovernmental Agreement with Adams County for Community Corrections Program Services and appointing Broomfield Representatives to the Community Corrections Board.

## Section 1.

The renewal of the intergovernmental agreement between the City and County of Broomfield and Adams County for Community Corrections Program Services through 2027, attached hereto, 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 an agreement, in form approved by the City and County Attorney.

## Section 3.

Police Commander David Walts and Judge Amy Bockman are hereby appointed to serve as Broomfield’s representatives on the Community Corrections Board. Should Judge Bockman or Commander Waltz no longer be able to serve on the Board, the City and County Manager or designee is authorized to approve a replacement Board representative when needed.

## Section 4.

The City and County Manager or designee is authorized to approve any amendments or modifications to the agreement provided such amendments or modifications are consistent with the fundamental purpose of the agreement.

## Section 5.

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

Approved on November 12, 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

**ADAMS COUNTY, COLORADO**  
**RENEWAL OF INTERGOVERNMENTAL AGREEMENT WITH**  
**THE CITY AND COUNTY OF BROOMFIELD FOR**  
**COMMUNITY CORRECTIONS PROGRAM SERVICES THROUGH 2027**

THIS INTERGOVERNMENTAL AGREEMENT ("IGA") is made by and between the Adams County Board of County Commissioners, located at 4330 South Adams County Parkway, Brighton, CO 80601, hereinafter referred to as the "County," and the City and County of Broomfield, located at One DesCombes Drive, Broomfield, CO 80020, hereinafter referred to as "Broomfield." The County and Broomfield may be collectively referred to herein as the "**Parties.**"

WHEREAS, pursuant to Colo. Const. art. XV, § 18 and C.R.S. § 29-1-203, the Parties are authorized to cooperate or contract with each other to provide any function or service lawfully authorized to each; and,

WHEREAS, pursuant to Colo. Const. art. XX, §§ 10 through 13, on November 15, 2001, all territory within the City of Broomfield became a single city and county municipal corporation known as "the City and County of Broomfield;" and,

WHEREAS, pursuant to C.R.S. § 13-5-118, the County and Broomfield are both in the 17<sup>th</sup> Judicial District; and,

WHEREAS, the County and Broomfield desire to continue to cooperate in providing community corrections program services in the 17<sup>th</sup> Judicial District, pursuant to C.R.S. § 17-27-101, *et seq.*

NOW, THEREFORE, in consideration of the mutual covenants and promises set forth, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the County and Broomfield agree as set forth herein.

**SECTION I - COMMUNITY CORRECTIONS BOARD**

- A. The Adams County Community Corrections Board (ACCCB) is an advisory board to the Adams County Board of County Commissioners, pursuant to C.R.S. § 17-27-103(1).
- B. Pursuant to the Resolution approving continuing the Adams County Community Corrections Board representing the 17<sup>th</sup> Judicial District the ACCCB is composed of no fewer than seven (7) and no greater than eleven (11) members.
- C. On or after November 15, 2001, the Adams County Board of County Commissioners appointed two (2) at-large members to the ACCCB to represent Broomfield. This representation shall continue, and such representatives shall be reappointed, or other representatives shall be newly appointed, upon the recommendation of Broomfield. Broomfield's representatives shall be voting members of the ACCCB, and shall serve on

the ACCCB throughout the term of this IGA unless otherwise removed from the ACCCB as provided in its By-laws.

## **SECTION II - COMMUNITY CORRECTIONS PROGRAM ADMINISTRATION AND FUNDING**

- A. The Adams County Board of County Commissioners shall be the "governing body," as defined in the Community Corrections Program Act, § 17-27-101, *et seq.*, C.R.S., as amended, responsible for the administration of community corrections programs in the 17<sup>th</sup> Judicial District. As such, it shall enter into all contracts and subcontracts for community corrections programs in the 17<sup>th</sup> Judicial District, upon the advice of the ACCCB.
- B. The County shall continue to receive, administer, and expend all funds associated with community corrections program contracts in the 17<sup>th</sup> Judicial District, and shall do so in accordance with all applicable statutes, rules, and regulations of the State of Colorado.
- C. The Adams County Board of County Commissioners shall, at its sole discretion, employ a community corrections program administrator who shall be an employee of the County and not of Broomfield. The current community corrections program administrator is Johanna Siens, whose office is located in the Adams County Government Center, 4430 South Adams County Parkway Brighton, CO 80601 and whose phone number is 720-523-6950 and whose facsimile number is (720) 523-2991.

## **SECTION III - TERM**

The term of this Agreement shall be from January 1, 2025, through December 31, 2027.

## **SECTION IV - MUTUAL UNDERSTANDINGS**

### A. Jurisdiction and Venue.

The laws of the State of Colorado shall govern as to the interpretation, validity, and effect of this IGA. The Parties agree that jurisdiction and venue for any disputes arising under this IGA shall be with the 17<sup>th</sup> Judicial District, Colorado.

### B. Waiver.

Waiver of strict performance or the breach of any provision of this IGA shall not be deemed a waiver, nor shall it prejudice the waiving Party's right to require strict performance of the same provision, or any other provision in the future, unless such waiver has rendered future performance commercially impossible.

C. Force Majeure.

Neither Party shall be liable for any delay or failure to perform its obligations hereunder to the extent that such delay or failure is caused by a force or event beyond the control of such party including, without limitation, war, embargoes, strikes, governmental restrictions, riots, fires, floods, earthquakes, or other acts of God.

D. Notice.

Any notices given under this IGA are deemed to have been received and to be effective: (1) three (3) days after the same shall have been mailed by certified mail, return receipt requested; (2) immediately upon hand delivery; or (3) immediately upon receipt of confirmation that a facsimile was received. For the purposes of this IGA, any and all notices shall be addressed to the contacts listed below:

For the County:

Adams County Attorney's Office  
4430 S. Adams County Parkway, 5<sup>th</sup> Floor, suite CS000B  
Brighton, CO 80601  
Phone No. 720-523-6116  
Facsimile No. 720-523-6114

For the City:

Office of the City and County Attorney  
The City and County of Broomfield  
One Descombes Drive  
Broomfield, Colorado 80020  
Phone No.: 303-464-5899  
Facsimile No.: 303-438-6228

E. Integration of Understanding.

This IGA contains the entire understanding of the Parties hereto and neither it, nor the rights and obligations hereunder, may be changed, modified, or waived except by an instrument in writing that is signed by the Parties hereto.

F. Paragraph Headings.

Paragraph headings are inserted for the convenience of reference only.

G. Counterparts.

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

H. Parties Interested Herein.

Nothing expressed or implied in this IGA is intended or shall be construed to confer upon or to give to, any person other than the Parties, any right, remedy, or claim under or by reason of this IGA or any covenant, terms, conditions, or provisions hereof. All covenants, terms, conditions, and provisions in this IGA by and on behalf of the County and Broomfield shall be for the sole and exclusive benefit of the County and Broomfield.

I. Severability.

If any provision of this IGA is determined to be unenforceable or invalid for any reason, the remainder of this IGA shall remain in effect, unless otherwise terminated in accordance with the terms contained herein.

J. Authorization.

Each party represents and warrants that it has the power and ability to enter into this IGA, to grant the rights granted herein, and to perform the duties and obligations herein described.

IN WITNESS WHEREOF, the Parties hereto have caused their names to be affixed.

BOARD OF COUNTY COMMISSIONERS  
ADAMS COUNTY

\_\_\_\_\_

Chair

\_\_\_\_\_

Date

ATTEST:  
JOSH ZYGIELBAUM  
CLERK AND RECORDER

Approved as to form:

\_\_\_\_\_

Deputy Clerk

\_\_\_\_\_

Adams County Attorney's Office

THE CITY AND COUNTY OF BROOMFIELD  
BROOMFIELD, COLORADO

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date

ATTEST:  
CLERK AND RECORDER

Approved as to form:

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





**E. Proposed Resolution Approving the 2024 Amendment to City Manager's Employment Agreement**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6E.
Presented By	
Niki Macklin, HR Director	
Community Goals	

## Overview

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution No. 2024-109, if approved, would authorize an amendment to the Employment Agreement for Ms. Hoffman to reflect a performance-based merit increase of her current base annual salary.

### **Attachments**

[Memo- 2024 Amendment to City Manager Employment Agreement Hoffman.pdf](#)

[Resolution No. 2024-109 Approving the 2024 Amendment to City Manager's Employment Agreement.pdf](#)

[2024 Amendment to City Manager Employment Agreement Hoffman \(1\).pdf](#)



## Summary

[View Correspondence](#)

[View Presentation](#)

Jennifer Hoffman began her service as City and County Manager on July 31, 2019, after being at the [May 21, 2019](#) City Council meeting and entering into an [Employment Agreement](#) on June 25, 2019.

Recently and pursuant to the Employment Agreement, City Council has concluded an assessment of the City and County Manager's performance. Based on her annual performance review conducted by Council, City Council would like to consider a performance-based merit increase for Ms. Hoffman to move her to the 70th percentile of the 2025 salary range for City and County Manager or the 70th percentile of the 2024 salary range, which is \$317,204, whichever is greater. The 2025 CCOB salary ranges will be finalized by the end of December 2024.

Proposed Resolution No. 2024-109, if approved, would authorize an amendment to the Employment Agreement for Ms. Hoffman to reflect a performance-based merit increase of her current base annual salary.

Employee has requested, and the City has agreed that this increase will not take effect on Employee's anniversary date of August 2024. Rather, the salary set forth in this Amendment will take effect in January 2025, on the same date the 2025 merit increases are given to eligible CCOB employees.

All other terms and conditions of the current Employment Agreement as previously established or amended shall remain the same.

## Financial Considerations

This position is funded in the 2025 budget. The exact amount of the proposed merit adjustment is unknown at this time as the 2025 salary ranges will not be finalized until the end of December 2024. The organization has budgeted for up to a 5% merit increase for all employees.

## Prior Council or Other Entity Actions

On [June 25, 2019](#), City Council approved Jennifer Hoffman's Employment Agreement.  
On [February 25, 2020](#), City Council approved the First Amendment to Ms. Hoffman's Employment Agreement.  
On [August 10, 2021](#), Council approved the Second Amendment to Ms. Hoffman's Employment Agreement.  
On [September 27, 2022](#), Council approved the 2022 (3rd) Amendment to Ms. Hoffman's Employment Agreement.  
On [October 24, 2023](#), Council approved the 2022 (4th) Amendment to Ms. Hoffman's Employment Agreement

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to move forward with the amendment, then the appropriate motion is:  
**That Resolution No. 2024-109 be approved.**

## Alternatives

Reject the amendment. The current agreement, as amended previously, remains in effect.

# RESOLUTION NO. 2024-109

A resolution approving the 2024 amendment to employment agreement between the City and County of Broomfield and the City and County Manager

Whereas, the City and County of Broomfield (the “City”) entered into an Employment Agreement with Jennifer Hoffman (“Ms. Hoffman”) as the City and County Manager of Broomfield on July 31, 2019, which has been previously amended; and

Whereas, the City and Ms. Hoffman desire to amend the Employment Agreement to reflect a compensation increase following her annual performance review (“Employment Agreement”); and

Whereas, the City and Ms. Hoffman mutually agree to the terms set forth in the attached 2024 Amendment to Employment Agreement (“Employment Agreement”).

Now, therefore, be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

The City Council hereby approves the 2024 Amendment to Employment Agreement, which is attached hereto.

## Section 2.

The Mayor or Mayor Pro-Tem is authorized to sign and the Office of the City and County Clerk is authorized to attest the 2024 Amendment to Employment Agreement, in form approved by legal counsel for the City.

## Section 3.

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

Approved on November 12, 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

## 2024 Amendment to Employment Agreement

This 2024 Amendment to Employment Agreement, made and entered into this 12th day of November 2024, by and between the City and County of Broomfield, a Colorado municipal corporation and county ("City") and Jennifer Hoffman ("Employee").

WHEREAS, City and Employee entered into the initial Employment Agreement dated June 25, 2019, which has been amended previously by agreement of the parties; and

WHEREAS, the Employment Agreement specifically provides for the review of compensation on an annual basis; and

WHEREAS, City and Employee desire to amend the Agreement to increase annual compensation is as set forth in this 2024 Amendment.

NOW, THEREFORE, in consideration of the mutual promises and covenants of the parties and other good and valuable consideration received, receipt of which is hereby acknowledged, the parties agree as follows:

**Section 1:** Section 3 of the Agreement "Compensation" is hereby amended to read as follows:

### **Section 3: Compensation.**

City agrees to pay Employee a base annual salary of the dollar amount equivalent to the 70th percentile of the 2025 range for City and County Manager or the 70th percentile of the 2024 range, which is \$317,204, whichever is greater. The 2025 CCOB salary ranges will be finalized by the end of December 2024.

Employee has requested, and the City has agreed that this increase will not take effect on Employee's anniversary date of August 2024. Rather, the salary set forth in this Amendment will take effect in January 2025, on the same date the 2025 merit increases are given to eligible CCOB employees.

This agreement shall be amended to reflect any compensation adjustments approved by the City Council. Consideration shall be given on an annual basis to review compensation. Increased compensation may be in the form of a salary increase and/or a bonus.

**Section 2: Approval.** Except as amended herein, the Employment Agreement as previously amended remains in full force and effect. This 2024 Amendment to Employment Agreement, upon execution, shall be binding upon the parties, their heirs, successors and assigns.

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

EMPLOYEE:

\_\_\_\_\_  
Jennifer Hoffman



**F. Proposed Resolution for Metro Fibernet LLC Fiber Optic Master License Agreement**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6F.
Presented By	
Katie Allen	
Community Goals	

## Overview

[View Correspondence](#)

[View Presentation](#)

Metro Fibernet, LLC (Metronet) 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 Metronet 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.

**Attachments**

[Metro Fibernet LLC License Agreement Council Memo.pdf](#)

[Resolution 2024-51 Metro Fibernet License Agreement.pdf](#)

[MFN-City and Cty of Broomfield CO-Master License Agreement-100724 \(part 1\) - signed.pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

Metro Fibernet, LLC, (Metronet) 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 Metronet 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.

Metro Fibernet currently intends to construct infrastructure within Broomfield primarily northeast of Highway 36 and southwest of 144th Avenue. This Master License Agreement approves phased installation throughout the City, so Metro Fibernet could decide to install in other locations under this agreement. 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. Metro Fibernet 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 Metro Fibernet decide to expand elsewhere in the City.

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.

## Financial Considerations

Metro Fibernet, LLC, (Metronet) is required to pay Broomfield a \$500 application fee and applicable permit fees.

## Prior Council or Other Entity Actions

This is the Fourth Master License Agreement for a company to install fiber-to-home infrastructure. The following Master License Agreements for installing fiber-to-home infrastructure were previously authorized by City Council:

On August 13, 2024 Council approved Resolution No. [2024-63](#) for a Master License Agreement for HyperFiber of Colorado, LLC (HyperFiber)

On August 13, 2024 Council approved Resolution No. [2024-99](#) for a Master License Agreement for BIF IV Intrepid OPCO, LLC (Intrepid)

On October 1st, 2024 Council Approved Resolution No. [2024-135](#) for a Master License Agreement for Vero Broadband, LLC (Vero)

## 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 2024-51 be adopted.**

## Alternatives

Do not approve the agreement.

# RESOLUTION NO. 2024-51

A resolution approving a Master License Agreement by and between the City and County of Broomfield and Metro Fibernet, 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 Metro Fibernet, 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 November 12, 2024.

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to form:

KKH

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

**MASTER LICENSE AGREEMENT FOR FIBER OPTIC NETWORK BY AND BETWEEN THE CITY AND COUNTY OF AND METRO FIBERNET, 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 Metro Fibernet, LLC, a Nevada 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 VP of Construction, Scott Grieble, as the authorized representative of the Contractor under this Agreement. Email address is [scott.grieble@metronet.com](mailto:scott.grieble@metronet.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: Metronet NOC (833) 266-5812.
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. Notwithstanding the foregoing, the Company may, with written notice to the City, assign this Agreement to: (a) an affiliate or parent company; (b) a successor that purchases all or substantially all of Company's assets or equity; or (c) any entity into which Company merges or consolidates.
- 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

METRO FIBERNET, LLC,  
a Nevada limited liability company

By:   
Stacy Jenkins Oct 7, 2024 23:44 CDT  
Stacy Jenkins, Sr. VP of Construction  
Address: 8837 Bond St, Overland Park, KS 66214



## 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

**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.	<p><b>Commercial General Liability</b></p> <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>	<p>Minimum Limits:</p> <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.	<p><b>Automobile Liability</b></p> <ul style="list-style-type: none"> <li>Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos).</li> </ul>	<p>Minimum Limit:</p> <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.	<p><b>Workers' Compensation</b></p> <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>	<p>Employer's Liability with Minimum Limits:</p> <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.	<p><b>Environmental Liability Insurance</b></p> <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>	<p>Minimum Limit:</p> <ul style="list-style-type: none"> <li>\$1,000,000 Each Occurrence/Aggregate</li> </ul>
5.	<p><b>Excess or Umbrella Coverage</b></p> <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>	<p>Minimum Limit:</p> <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



# City and County of Broomfield

## City Council Regular Meeting

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### G. BOE Proposed Resolution for Action on Abatement Petitions

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6G.
Presented By	
Crystal Clemens, City Clerk	
Community Goals	

## Overview

BOE resolution for Action on Abatement Petitions

### **Attachments**

[Memo - BOE Action on Abatement Petitions.pdf](#)

[Resolution 2024-117-BOE - Action on Abatement Petitions.pdf](#)



## Summary

[View Correspondence](#)

Staff is requesting that Council, sitting as the Board of Equalization, approve actions on several abatement petitions.

Abatements can be received at any time throughout the year, but the deadline for filing is the first working day in January within two years of the date the taxes were levied. As a result, Broomfield tends to see most abatements filed in late December to early January each year; however, the petitions below were received later in the year. Pursuant to C.R.S. §39-1-113(1.7), every abatement or refund petition shall be acted upon within six months of the date of filing of the petition.

The taxpayers identified below have filed abatement petitions alleging that their property has been overvalued or that their tax levy is illegal. Council appointed hearing officers with experience in property valuations to hear protest and abatement cases and make recommendations to City Council on such proceedings.

In some instances the property owner or tax agent declined to participate in the hearing (also known as an “administrative denial”) and elected to forgo the hearing process understanding that the petition would be denied since no evidence was presented supporting the property owner’s position. The property owners and tax agents are willing to take an “administrative denial” because they still have an opportunity to appeal the decision to the State Board of Assessment appeals at the next level.

An administrative denial was requested for the following petition:

- a. Petitioner Schedule No.: [WONDERLAND BREWING COMPANY LLC R2125486](#)

On October 29, 2024, an abatement hearing was held by an appointed hearing officer and neither the petitioner, nor their tax agent attended the hearing; as a result, the hearing officer is recommending denial in the following petition:

- b. Petitioner Schedule No.: [STULU LLC R8868682](#)

The Assessor’s Office will continue to work with the petitioners as these items are appealed to the State Board of Assessment Appeals, but a formal action of the County Board of Equalization is required before the appeal to the next level may be granted.

## Financial Considerations

While there is a financial implication to Broomfield with the adjustment of property valuations, the valuation of property is handled at the individual property level. The hearing officers are well versed in property valuation and will look at each property individually to determine the actual value of the taxable property based on Colorado statutes by using the appropriate valuation method - the cost approach, sales comparison (market) approach or income approach. The findings presented represent the individual assessment of each property, and not the overall impact to Broomfield’s finances.

## Prior Council or Other Entity Actions

On February 13, 2024, Council approved [Ordinance 2225](#) transferring the Board of Equalization (BOE) duties from a separate resident board to Council.

On May 28, 2024, Council approved [Resolution No. 2024-41-BOE](#) confirming the appointment of existing hearing officers, appointing a new hearing officer and two new arbitrators.

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

N/A

## **Proposed Actions / Recommendations**

Staff recommends Council approve Resolution 2024-117-BOE to formally deny the above referenced abatement petitions. To do so, the appropriate motion is...

**That Resolution 2024-117-BOE be adopted.**

## **Alternatives**

Do not adopt Resolution 2024-117-BOE. This is not advised and will result in Broomfield not meeting its statutory deadlines for these petitions.

The City and County Attorney's Office recommends that Council adopt the denials as a final action of the Board of Equalization. The taxpayers will be notified of the decision and will have an opportunity to appeal this decision.

# RESOLUTION NO. 2024-117-BOE

## A Resolution Denying Certain Abatement Petitions

### Recitals.

Whereas, City Council sits as the Broomfield Board of Equalization; and

Whereas, pursuant to C.R.S. §39-1-113 and §39-10-114, City Council appointed independent referees, or hearing officers, experienced in property valuation to conduct hearings on behalf of Broomfield's board of equalization and submit final recommendations to Council for approval; and

Whereas, the petitioners identified below have submitted petitions for abatements or refunds for taxes alleging taxes have been levied erroneously or illegally, whether due to erroneous valuation for assessment, irregularity in levying, clerical error, or overvaluation and the petitioners have submitted evidence of the proposed value for the subject property;

Whereas, one petitioner identified below elected to forgo a formal hearing with a hearing officer with the understanding that a decision of denial of the petition would be entered by the County Board of Equalization (i.e. an Administrative Denial);

Whereas, on October 29, 2024, a hearing was conducted on the valuation of the remaining property at issue; and

Whereas, the hearing officer made findings and recommendations detailed below to Council.

Now, therefore, be it resolved by the City Council of the City and County of Broomfield, Colorado sitting as the Board of Equalization:

### Section 1.

The findings and recommendations of the hearing officer on attached Exhibit A are hereby adopted by Council, and based on those recommendations, Council hereby **denies** the petitions listed in Exhibit A.

### Section 2.

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

Approved on November 12, 2024

Board of Equalization

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Mayor

Attest:

---

Office of the City and County Clerk

Approved as to form:

KKH

---

City and County Attorney

**Exhibit A**  
Resolution 2024-117-BOE  
Denials

1. Petitioner Schedule No.: [WONDERLAND BREWING COMPANY LLC R2125486](#)
2. Petitioner Schedule No.: [STULU LLC R8868682](#)



**H. Ordinance Wadsworth Station Reimbursement Assessment District - First Reading**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6H.
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](#)

[View Presentation](#)

The Wadsworth Station developer, Mountain View (Wadsworth Phase ONE), LLC. (Developer) was required to construct 6,188 linear feet of water main line in Wadsworth Boulevard and W. 116th Avenue to provide potable water and adequate fire flow for their development. Prior to plan approval and construction of the water line, the Developer contacted Broomfield regarding options to be reimbursed for the water line improvements by the adjacent benefiting properties. Broomfield directed the Developer to Section 14-06 of the Broomfield Municipal Code (B.M.C.) related to Reimbursement Assessment Districts. Following construction acceptance of the water line improvements, the Developer filed an application dated February 27, 2024 for a reimbursement assessment district (District) pursuant to subsection 14-06-070(A)(2), B.M.C., seeking reimbursement for water lines that the Developer constructed along Wadsworth Boulevard and W. 116th Avenue. There are thirteen (13) parcels owned by nine (9) entities that benefit from the construction of the water line improvements and are included in the proposed District. Two of the parcels are owned by the Developer, Mountain View (Wadsworth Phase ONE), LLC. Ordinance No. 2250 establishes the Wadsworth Station Reimbursement Assessment District and assesses the amounts shown above.

### **Attachments**

[Memo Wadsworth Station Reimbursement Assessment District- 1st Reading.pdf](#)

[Ordinance 2250 Wadsworth Station RAD.pdf](#)

[Wadsworth Station Reimbursement Assessment District Application - Approved.pdf](#)

## Summary

[View Correspondence](#)

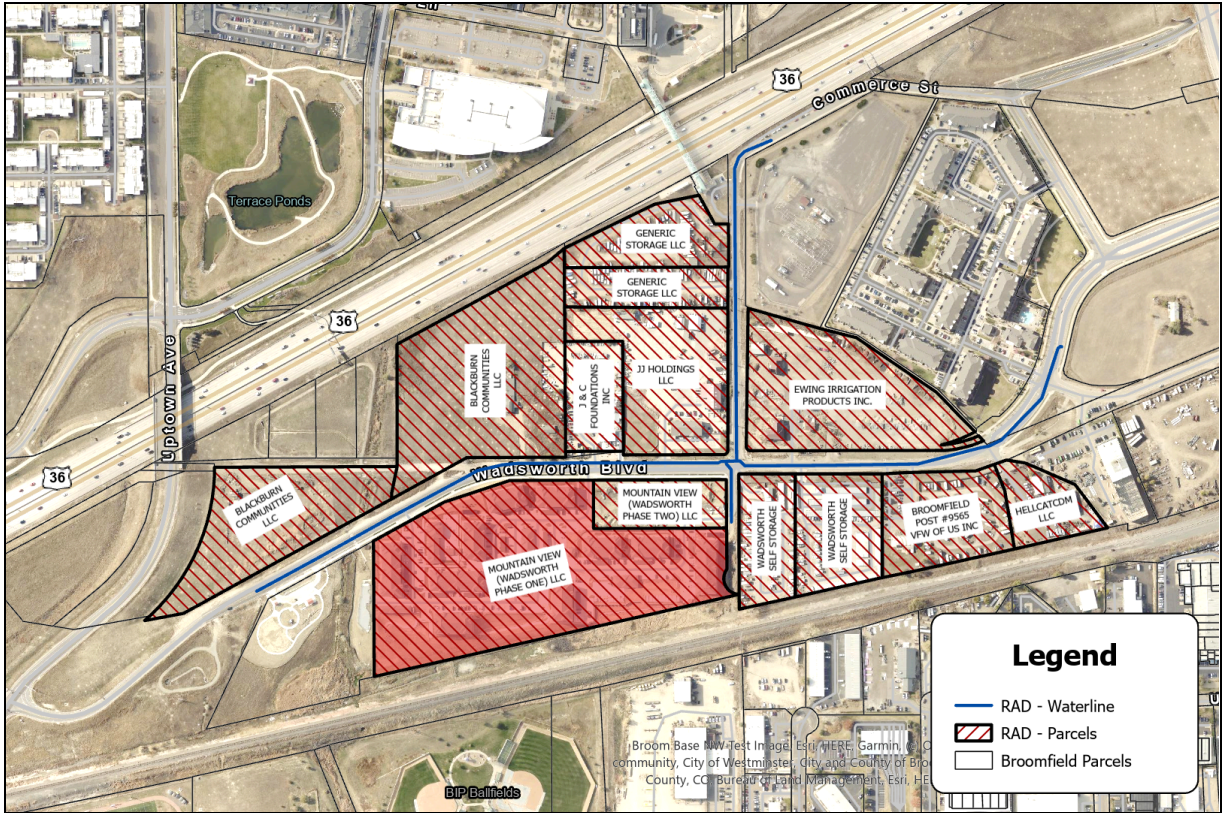
[View Presentation](#)

The Wadsworth Station developer, Mountain View (Wadsworth Phase ONE), LLC. (Developer) was required to construct 6,188 linear feet of water main line in Wadsworth Boulevard and W. 116th Avenue to provide potable water and adequate fire flow for their development. By doing so, the Developer brought potable water and fire protection (regularly spaced fire hydrants) to an area that has had only groundwater wells. Prior to plan approval and construction of the water line, the Developer contacted Broomfield regarding options to be reimbursed for the water line improvements by the adjacent benefiting properties. Broomfield directed the Developer to [Section 14-06](#) of the Broomfield Municipal Code (B.M.C.) related to Reimbursement Assessment Districts.

When the Wadsworth Station development proceeded through the development review process, which included public hearings, the intent to establish a Reimbursement Assessment District was noted as a special provision of the subdivision improvement agreement.

Before the Developer started construction, Broomfield sent a letter on February 19, 2021, notifying the benefiting property owners of the proposed water line construction and proposed reimbursement assessment district. The letter included information about the reimbursement assessment district process and method for calculating the cost share for each lot.

Following construction acceptance of the water line improvements, the Developer filed an [application](#) dated February 27, 2024 for a reimbursement assessment district (District) pursuant to subsection 14-06-070(A)(2), B.M.C., seeking reimbursement for water lines that the Developer constructed along Wadsworth Boulevard and W. 116th Avenue. There are thirteen (13) parcels owned by nine (9) entities that benefit from the construction of the water line improvements and are included in the proposed District. Two of the parcels are owned by the Developer, Mountain View (Wadsworth Phase ONE), LLC. A map ([Wadsworth Station RAD Map](#)) showing the location of the waterline improvements and the District properties is provided below (Wadsworth Station in shaded red):



The reimbursement amounts are shown in the table below. The method of assessment is by lot frontage because the Broomfield Standards and Specifications Section 419.02 requires that a property owner/developer extend water line improvements across the entire frontage of a lot.

Owner	Address	Parcel	Frontage Length	Cost Share
Blackburn Communities, LLC	11465 Wadsworth Blvd	171702443002	543	\$134,455
Mountain View (Wadsworth Phase ONE), LLC	11516 Wadsworth Blvd	171702424002	806	\$199,578
Mountain View (Wadsworth Phase Two), LLC	11570 Wadsworth Blvd	171702424001	596	\$147,578
Blackburn Communities, LLC	11465 Wadsworth Blvd	171702343001	629	\$155,750
J&C Foundations, Inc.	11515 Wadsworth Blvd	171702340001	200	\$49,523
JJ Holdings, Inc.	11575 Wadsworth Blvd	171702300001	823	\$203,787
Generic Storage, LLC	7600 W. 116th Ave	171702300023	145	\$35,904
Generic Storage, LLC	7780 W. 116th Ave	171702330001	151	\$37,390
Ewing Irrigation Products, Inc.	11605 Wadsworth Blvd	171702210001	1265	\$313,233



Owner	Address	Parcel	Frontage Length	Cost Share
Wadsworth Self Storage	11600 Wadsworth Blvd	171702100015	366	\$90,627
Wadsworth Self Storage	11650 Wadsworth Blvd	171702100014	288	\$71,313
Broomfield Post #9565 VFW of US, Inc.	11700 Wadsworth Blvd	171702100013	376	\$93,103
HellcatCDM, LLC	11730 Wadsworth Blvd	171702100011	44	\$10,894
		<b>Total</b>	<b>6,232</b>	<b>\$1,543,135</b>

In accordance with subsection 14-06- 070(C), B.M.C., the City provided notice to the owners of the property subject to the application by certified mail. JJ Holdings, Inc. (Janelle Roberts), one of the owners of the benefited properties located at 11575 Wadsworth Boulevard, objected to the terms of the District and [requested an administrative hearing](#). No other owners objected.

Geoff Wilson with Wilson, Williams, Fellman, Dittman, P.C. served as the Hearing Officer. An administrative hearing was held on July 9, 2024, pursuant to Section 14-06-070(D). The hearing officer’s [recommendation](#) to the Broomfield City Council is that the Wadsworth Station Reimbursement Assessment District be adopted as proposed, including the proposed assessment on the Complainant’s property, 11575 Wadsworth Boulevard.

Ordinance No. 2250 establishes the Wadsworth Station Reimbursement Assessment District and assesses the amounts shown above. Upon adoption of the ordinance, a notice of lien will be filed with the county clerk. The city will then proceed to invoice the owners of the assessed property, who may defer payment until such time as their property is platted, a building permit is issued, or the property is connected to the improvement, whichever comes first.

Pursuant to Code, this reimbursement assessment district shall terminate twenty years from the effective date of the ordinance establishing it. Any property that is platted or connected to the improvement thereafter is not subject to reimbursement assessment.

In the event that the owners elect to defer payment, the city will assign its rights of collection to the applicant entitled to reimbursement, unless the City Council determines that it would be more appropriate for the city to collect the assessment. If the City Council directs the city to collect the assessment pursuant to subsection 14-06-080(C), B.M.C., a separate agreement will be required between the city and the developer that outlines the terms concerning the collection and payment of the assessment. Per city code, included in the agreement will be the provision requiring that if an assessment becomes due and remains uncollected, the city will assign its right to collect any unpaid assessment to the developer entitled to reimbursement.

If the owner elects to defer payment of the assessment, the payment includes interest at the rate provided by Section 5-12-102(2), C.R.S. (8% per annum compounded annually) from the effective date of the ordinance.

The approval of the ordinance is a quasi-judicial function, and the decision is subject to judicial review under Rule 106(A)(4) of the Colorado Rules of Civil Procedure. Applications that comply with the requirements of Chapter 14-06 should be approved unless there is a specific deficiency in the application.

## **Financial Considerations**

There are no financial considerations for the establishment of the reimbursement assessment district.

## **Prior Council or Other Entity Actions**

N/A

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

N/A

## **Proposed Actions / Recommendations**

If Council desires to proceed with the Wadsworth Station Reimbursement Assessment District, the appropriate motion is:

**That Ordinance No. 2250 be approved on first reading and published in full, and that a second reading and public hearing be scheduled for December 3, 2024.**

## **Alternatives**

Council could choose not to approve Ordinance No. 2250, rejecting the establishment of the RAD. This is not advised unless Council can point to a specific requirement for establishing the RAD that wasn't met by the applicant. Without sufficient support, the rejection of the RAD will potentially be found to be an arbitrary and capricious decision under Rule 106(A)(4). Additionally, rejection of the RAD is not advised because it was envisioned to be created when the Wadsworth Station development was initially approved by the City Council and is a requirement in the subdivision improvement agreement.

# ORDINANCE NO. 2250

An ordinance establishing the Wadsworth Station Reimbursement Assessment District and Assessing the Benefitted Property Therein

## Recitals.

Whereas, Mountain View (Wadsworth Phase ONE), LLC. (Developer) filed an application dated February 27, 2024, for a reimbursement assessment district pursuant to subsection 14-06-070(A)(2), B.M.C., seeking reimbursement for certain public improvements (water lines) the Developer constructed along Wadsworth Boulevard and 116th Avenue; and

Whereas, pursuant to subsection 14-06-030, B.M.C., a developer who constructs and dedicates to Broomfield a street, sidewalk, water main, sewer main, bicycle trail, bridge, storm drainage facility, or other public improvement may apply to the city for the establishment of a reimbursement assessment district in order to be reimbursed for a portion of the cost of such public improvement from the owners of other property that is specially benefited by the improvements; and

Whereas, any property is eligible for inclusion in a reimbursement assessment district if it has been specially benefited by a street, sidewalk, bicycle trail, storm drainage facility, bridge, water main, sewer main, or other improvement constructed by a developer and dedicated to Broomfield; and

Whereas, Broomfield gave notice of such application by certified mail to the owners of each property within the proposed assessment district; and

Whereas, JJ Holdings, Inc., owner of the benefited property located at 11575 Wadsworth Boulevard, requested an administrative hearing on the establishment of a reimbursement assessment district on May 31, 2024; and

Whereas, on July 9, 2024, an administrative hearing was held on behalf of Broomfield by a hearing officer, at the Broomfield City and County Building pursuant to Section 14-06-070(D), B.M.C.; and

Whereas, JJ Holdings Inc, through its representative, was allowed to participate in the administrative hearing and to argue before the hearing officer why the property located at 11575 Wadsworth Boulevard is not specially benefited by the public improvements constructed by the Developer and that it should not be included in the proposed reimbursement assessment district; and

Whereas, pursuant to subsection 14-06-070(E), B.M.C., the hearing officer submitted to Broomfield on July 18, 2024, his Advisory Opinion on Objection to Wadsworth Station Reimbursement Assessment District summarizing the objection from JJ Holdings Inc. and making recommendations to the city council; and

Whereas, the hearing officer’s recommendation to the Broomfield City Council is that the Wadsworth Station Reimbursement Assessment District be adopted as proposed, including the proposed assessment on the property owned by JJ Holdings, Inc. A copy of the recommendation has been provided to the Mayor and each member of the city council.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

**Section 1.**

Pursuant to the provisions of section 14-06-070, B.M.C., the Wadsworth Station Reimbursement Assessment District is hereby established.

**Section 2.**

The owners of the property assessed in the District are:

Owner	Address	Parcel
Blackburn Communities, LLC	11465 Wadsworth Blvd	171702443002
Mountain View (Wadsworth Phase ONE), LLC	11516 Wadsworth Blvd	171702424002
Mountain View (Wadsworth Phase Two), LLC	11570 Wadsworth Blvd	171702424001
Blackburn Communities, LLC	11465 Wadsworth Blvd	171702343001
J&C Foundations, Inc.	11515 Wadsworth Blvd	171702340001
JJ Holdings, Inc.	11575 Wadsworth Blvd	171702300001
Generic Storage, LLC	7600 W. 116th Ave	171702300023
Generic Storage, LLC	7780 W. 116th Ave	171702330001
Ewing Irrigation Products, Inc.	11605 Wadsworth Blvd	171702210001
Wadsworth Self Storage	11600 Wadsworth Blvd	171702100015
Wadsworth Self Storage	11650 Wadsworth Blvd	171702100014
Broomfield Post #9565 VFW of US, Inc.	11700 Wadsworth Blvd	171702100013
HellcatCDM, LLC	11730 Wadsworth Blvd	171702100011

### Section 3.

For the purpose of reimbursing the Developer for the construction of waterline improvements in Wadsworth Boulevard and 116th Avenue, there is hereby levied and assessed against the real property described in section 2 above, all of which is within the boundaries of the District, the following amounts:

Owner	Address	Frontage Length	Cost Share
Blackburn Communities, LLC	11465 Wadsworth Blvd	543	\$134,455
Mountain View (Wadsworth Phase ONE), LLC	11516 Wadsworth Blvd	806	\$199,578
Mountain View (Wadsworth Phase Two), LLC	11570 Wadsworth Blvd	596	\$147,578
Blackburn Communities, LLC	11465 Wadsworth Blvd	629	\$155,750
J&C Foundations, Inc.	11515 Wadsworth Blvd	200	\$49,523
JJ Holdings, Inc.	11575 Wadsworth Blvd	823	\$203,787
Generic Storage, LLC	7600 W. 116th Ave	145	\$35,904
Generic Storage, LLC	7780 W. 116th Ave	151	\$37,390
Ewing Irrigation Products, Inc.	11605 Wadsworth Blvd	1265	\$313,233
Wadsworth Self Storage	11600 Wadsworth Blvd	366	\$90,627
Wadsworth Self Storage	11650 Wadsworth Blvd	288	\$71,313
Broomfield Post #9565 VFW of US, Inc.	11700 Wadsworth Blvd	376	\$93,103
HellcatCDM, LLC	11730 Wadsworth Blvd	44	\$10,894
	Total	<b>6,232</b>	<b>\$1,543,135</b>

The method of assessment is by lot frontage. The lots listed above are within the District and are specially benefited by the improvements constructed by the Developer.

#### **Section 4.**

The decision of the City Council establishing the District, in levying the assessments, and in adopting this ordinance constitutes a final determination of the regularity, validity, and correctness of the proceedings, of the establishment of the district, of the assessments and of the amount levied on the District; and such determination of the city council shall be conclusive upon the owners of the property assessed.

#### **Section 5.**

The payment of the assessed amounts, including interest thereon, shall be secured by an assessment lien upon the property within the District.

#### **Section 6.**

The Wadsworth Reimbursement Assessment District shall terminate twenty years from the effective date of this ordinance.

#### **Section 7.**

The officers and employees of the City and County of Broomfield are hereby authorized and directed to take all action necessary or appropriate to implement the provisions of this ordinance.

#### **Section 8.**

If any section, paragraph, clause, or provision of this ordinance is declared invalid or unenforceable, the invalidity of such section, paragraph, clause, or provision shall not affect the remaining provisions of this ordinance. This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on November 12, 2024, and ordered published in full.

Introduced a second time and approved on December 3, 2024, and ordered published.

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

Wadsworth Station  
Reimbursement Assessment District

Mountain View (Wadsworth Phase ONE), LLC



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# REIMBURSEMENT ASSESSMENT DISTRICT APPLICATION

Community Development Department • Engineering

Date: 2/27/24

Fee: \$150

Project Name: Wadsworth Station

Project Address or Parcel IDs: 11516 Wadsworth Blvd, Broomfield, CO

**Applicant / Developer:**

Company: Mountain View (Wadsworth Phase ONE), LLC  
Contact: Jeff Sanders  
Address: 8900 Mountain View Ln  
Boulder, CO 80303  
Phone: (303) 862-8973  
E-Mail: jksanders@mountainviewcapital.org  
jeffsteinde@gmail.com

**Property Owner:** (per current title policy)

Company: Same as applicant  
Contact: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_

**Project Information:** (do not leave any blanks - use n/a)

Describe generally the nature of the improvements installed or to be installed: (attach additional sheet if necessary)  
Installation of the public waterline along Wadsworth Blvd and 116th Ave

Location of Improvements: (attach additional sheet if necessary) See attached Vicinity Map

Date of Installation or Proposed Installation Date of Improvements: August 2021 start date and  
June 2023 completion date

Total Cost of Improvements (attach copies of all supporting documentation, including three (3) construction bids): \$ 1,543,135

List items for which reimbursement is sought but for which no supporting documentation is submitted: N/A

---

Identify any portion of the total cost for which the applicant does not seek reimbursement and the reason therefore: *(attach additional sheet if necessary)* Pursuant to the municipal code, any costs that are for improvements where it only benefits the applicant's parcel can not be included in the total cost to be reimbursed. There is \$30,915 worth of construction costs enabling Parcel B to connect to the water main which needs to be backed out of the Bryan Construction, Inc. contract amount lowering the basis to \$1,338,644.

---

Total Amount of Reimbursement: \$     \$ 1,543,135    

Legal Description of proposed assessment district : *(attach additional sheet if necessary)*     See Title Reports    

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Attach a list of individual properties contained within the proposed district (by legal description and street address), the owners of each, their mailing addresses, if different from the above, and a statement describing the special benefit accruing to each such property by virtue of the improvement.

    The benefit of this improvement allows each parcel to tap into the public water utility.    

Specify the proposed manner of apportioning the cost among the properties and specific amount proposed to be assess against each : *(attach additional sheet if necessary)* \_\_\_\_\_

    The cost sharing for each parcel is the pro-rata share of waterline frontage.    

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Click this [link](#) for more information pertaining to the Reimbursement Assessment Districts.

Owner:     Mountain View (Wadsworth Phase ONE), LLC    

Date: \_\_\_\_\_

Signature:     *Please Print*  
    

Jeffrey K. Sanders, Manager

## Team Profile

**Applicant:** Mountain View (Wadsworth Phase One), LLC is the owner of Wadsworth Station and Palisade Park apartment projects in Broomfield, CO.

**Project Management:** Stein Development, Inc. has participated in the development and construction for over 4,000 units.

**General Contractor:** The Denver Business Journal ranks Bryan Construction the 17<sup>th</sup> largest general contractor based on revenue (\$340M in 2023) in Colorado.

**Excavating/Utility Subcontractor:** E-Z Excavating has been working in Broomfield for over 30 years.

All four entities have worked together on our first apartment project in Broomfield (built in 2017) as well as participating in the development and construction for Wadsworth Station (11615 Wadsworth Blvd.).

The selection process for the general contractor and excavator was straight forward. Each had the lowest responsible bid and fee structure coupled with having worked together previously on the 216 unit Palisade Park apartment complex and currently on the 276 unit Wadsworth Station project which is finishing up later this spring.

Constructing the water line and the apartment complex concurrently allowed for some measurable savings benefiting the bottom line of the waterline budget. The cost savings includes no insurance premiums as we were able to place the water line scope under the general liability and builder's risk umbrella policies of the apartment project. Water line personnel had the construction trailer, office equipment, etc. made available to them so there was no need to carry those costs nor pay any utilities during the term of construction. Another expense avoided was having to pay to truck off excess dirt spoils; instead we were able to transport to the adjacent apartment site at no charge.

## Project Management

In general terms, the project management scope is best described as overseeing, from start to finish, the entire process of constructing a 4,800 linear foot municipal water main with the consideration of completing the project on budget, on schedule and in full compliance of CCoB standards and specifications.

The project manager plays an instrumental role in all decision making at each step of the process. Throughout the 22 month timeline project management is interacting (including the contract administration) with the lender and their inspectors, the contractor, subcontractors, design engineers and consultants, QC inspection and testing consultants and CCoB (planning, engineering, public works, traffic departments).

## Non-Reimbursable Costs (\$30,915)

On Feb 26, 2024, at 7:55 AM, Kelly Huff <khuff@bryanconstruction.com> wrote:

Jeff,

I believe you already have a copy of this as well, but per EZ's original proposal dated 3/30/2021 I see the following:

- 3 each of 12"x12" Tee - **(3\*1,621) = \$4,863**
- 4 each of 12" Gate Valve - **(4\*3,852) = \$15,408**
- 1 each of 2" Irrigation Tap - **\$10,644**

### Kelly J. Huff

Pre-Construction Manager | Northern Colorado

<image001.png>

### 100% Employee-Owned

O. 970-377-0937 D. 970-305-8437

[www.bryanconstruction.com](http://www.bryanconstruction.com)

Colorado Springs | Denver | Fort Collins | Frankfurt

<image002.jpg>

<image003.jpg>

<image004.jpg>

<image005.png>

<image006.png>

<image007.png>

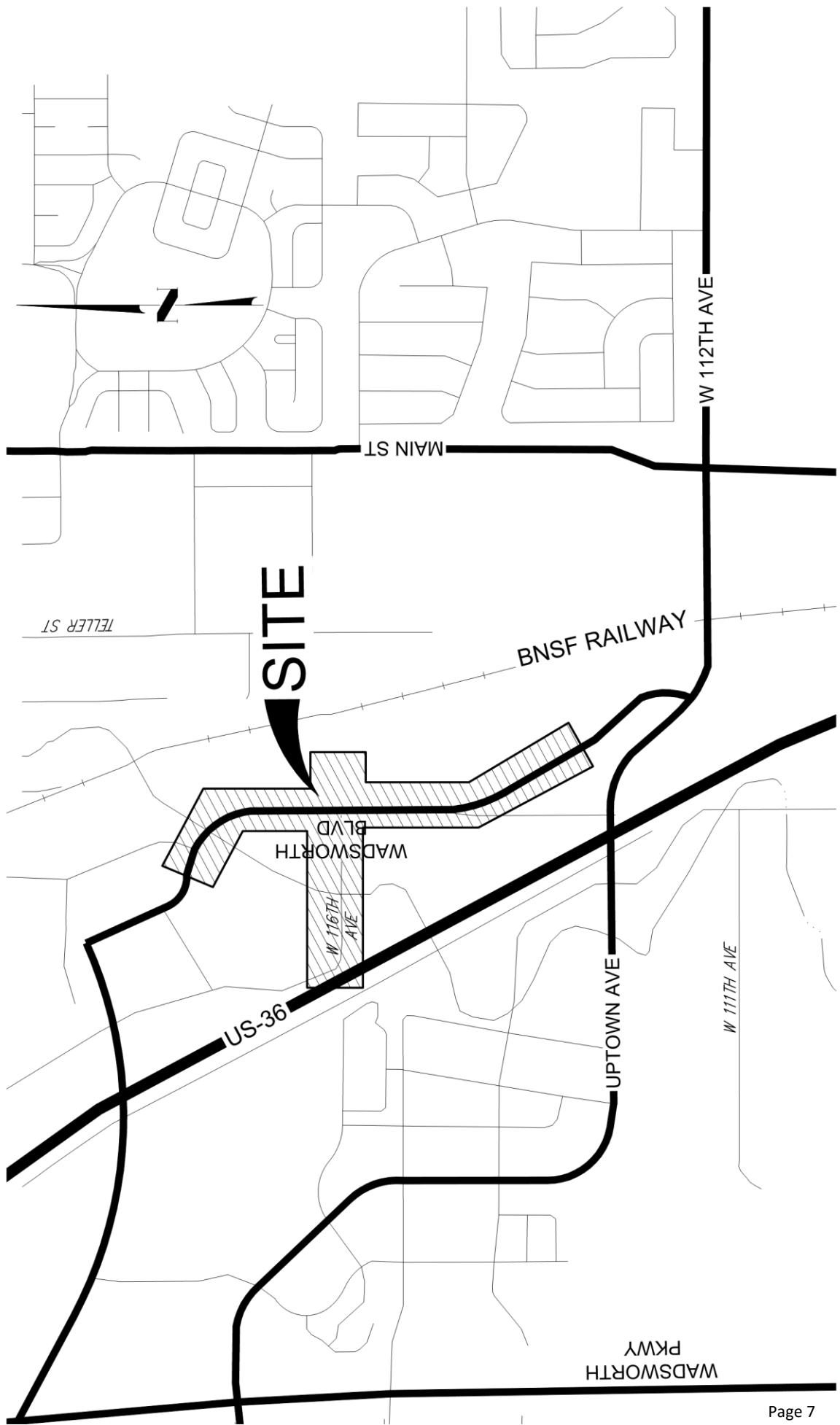
On Feb 20, 2024, at 8:52 AM, Ethan Rogers <erogers@hkseng.com> wrote:

Jeff,

Listed below are the parts and pieces of the off-site water main that CCoB is looking to make sure aren't included in the RAD; quantities below:

- Tees/Valves installed for Wadsworth Station Apts:
  - 3 – 12"x12" Tees
  - 4 – 12" Gate Valve
  - 1 – 2" Irrigation Tap

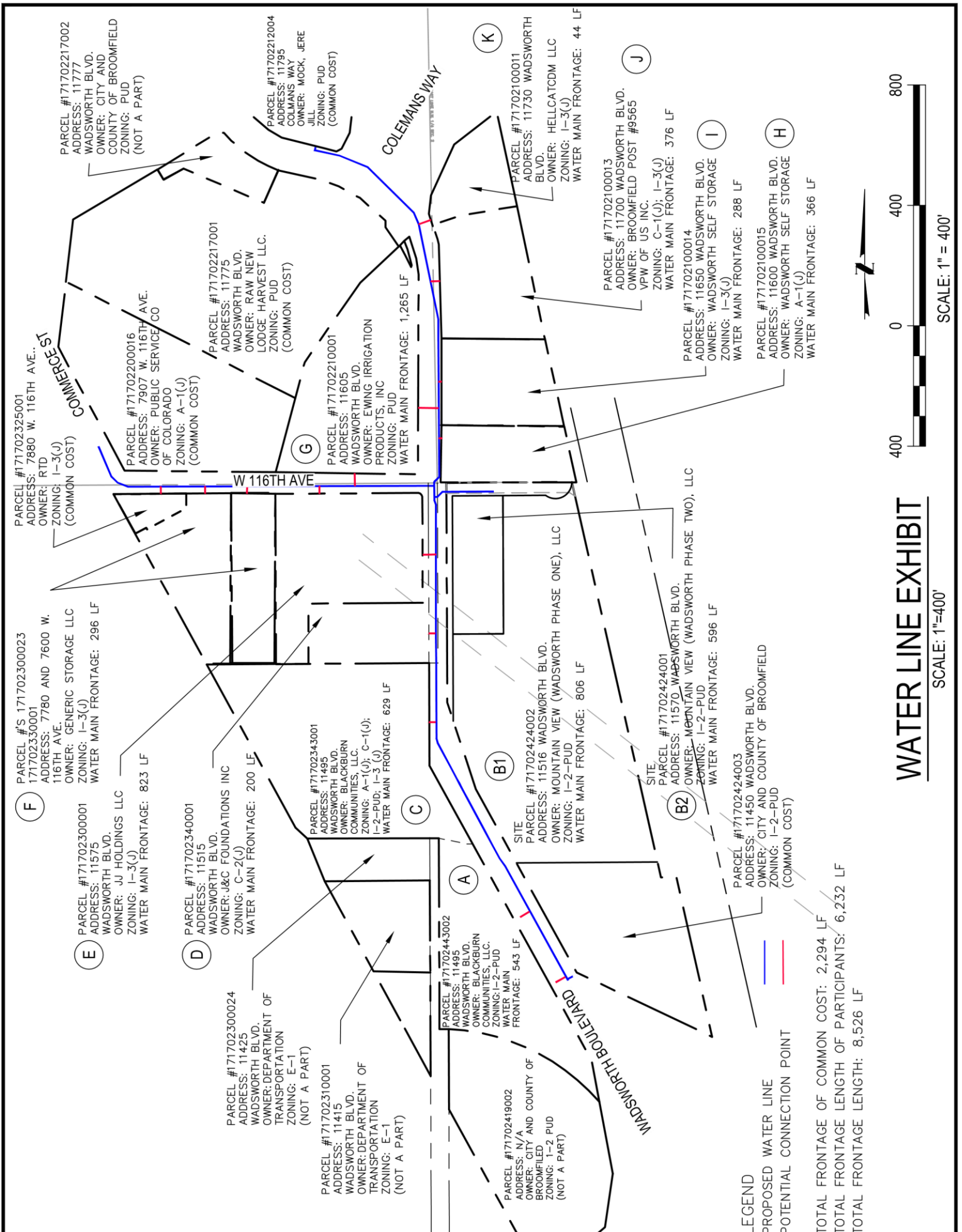
Thanks,  
Ethan



**HKS**  
**HARRIS**  
**KOCHER**  
**SMITH**

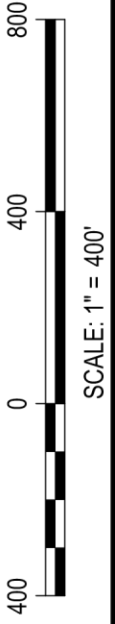
1120 Lincoln Street, Suite 1000  
 Denver, Colorado 80203  
 P: 303.623.6300 F: 303.623.6311  
 HarrisKocherSmith.com

**VICINITY MAP**  
 SCALE: 1" = 1000'



**LEGEND**  
 PROPOSED WATER LINE  
 POTENTIAL CONNECTION POINT

TOTAL FRONTAGE OF COMMON COST: 2,294 LF  
 TOTAL FRONTAGE LENGTH OF PARTICIPANTS: 6,232 LF  
 TOTAL FRONTAGE LENGTH: 8,526 LF



# WATER LINE EXHIBIT

SCALE: 1"=400'

**(F)** PARCEL #'S 171702300023  
 171702330001  
 ADDRESS: 7780 W. 116TH AVE.  
 OWNER: RTD  
 ZONING: I-3(J)  
 WATER MAIN FRONTAGE: 296 LF

**(E)** PARCEL #171702300001  
 ADDRESS: 11575  
 WADSWORTH BLVD.  
 OWNER: JJ HOLDINGS LLC  
 ZONING: I-3(J)  
 WATER MAIN FRONTAGE: 823 LF

**(D)** PARCEL #171702340001  
 ADDRESS: 11515  
 WADSWORTH BLVD.  
 OWNER: J&C FOUNDATIONS INC  
 ZONING: C-2(J)  
 WATER MAIN FRONTAGE: 200 LF

**(C)** PARCEL #171702343001  
 ADDRESS: 11495  
 WADSWORTH BLVD.  
 OWNER: BLACKBURN  
 COMMUNITIES, LLC  
 ZONING: A-1(J); C-1(J);  
 L-2-PUD; I-3(J)  
 WATER MAIN FRONTAGE: 629 LF

**(B1)** SITE  
 PARCEL #171702424002  
 ADDRESS: 11516 WADSWORTH BLVD.  
 OWNER: MOUNTAIN VIEW (WADSWORTH PHASE ONE), LLC  
 ZONING: I-2-PUD  
 WATER MAIN FRONTAGE: 806 LF

**(B2)** SITE  
 PARCEL #171702424001  
 ADDRESS: 11570 WADSWORTH BLVD.  
 OWNER: MOUNTAIN VIEW (WADSWORTH PHASE TWO), LLC  
 ZONING: I-2-PUD  
 WATER MAIN FRONTAGE: 596 LF

**(A)** PARCEL #171702443002  
 ADDRESS: 11495  
 WADSWORTH BLVD.  
 OWNER: BLACKBURN  
 COMMUNITIES, LLC  
 ZONING: I-2-PUD  
 FRONTAGE: 543 LF

**(K)** PARCEL #171702100011  
 ADDRESS: 11730 WADSWORTH  
 BLVD.  
 OWNER: HELLCATCDM LLC  
 ZONING: I-3(J)  
 WATER MAIN FRONTAGE: 44 LF

**(J)** PARCEL #171702100013  
 ADDRESS: 11700 WADSWORTH BLVD.  
 OWNER: BROOMFIELD POST #9565  
 VPW OF US INC.  
 ZONING: C-1(J); I-3(J)  
 WATER MAIN FRONTAGE: 376 LF

**(I)** PARCEL #171702100014  
 ADDRESS: 11650 WADSWORTH BLVD.  
 OWNER: WADSWORTH SELF STORAGE  
 ZONING: I-3(J)  
 WATER MAIN FRONTAGE: 288 LF

**(H)** PARCEL #171702100015  
 ADDRESS: 11600 WADSWORTH BLVD.  
 OWNER: WADSWORTH SELF STORAGE  
 ZONING: A-1(J)  
 WATER MAIN FRONTAGE: 366 LF

**(G)** PARCEL #171702210001  
 ADDRESS: 11605  
 WADSWORTH BLVD.  
 OWNER: EWING IRRIGATION  
 PRODUCTS, INC  
 ZONING: PUD  
 WATER MAIN FRONTAGE: 1,265 LF

PARCEL #171702210004  
 ADDRESS: 11795  
 COLMANS WAY  
 OWNER: MOCK, JERE  
 JILL  
 ZONING: PUD  
 (COMMON COST)

PARCEL #171702217002  
 ADDRESS: 11777  
 WADSWORTH BLVD.  
 OWNER: CITY AND  
 COUNTY OF BROOMFIELD  
 ZONING: PUD  
 (NOT A PART)

PARCEL #171702200016  
 ADDRESS: 7907 W. 116TH AVE.  
 OWNER: PUBLIC SERVICE CO  
 OF COLORADO  
 ZONING: A-1(J)  
 (COMMON COST)

PARCEL #171702217001  
 ADDRESS: 11775  
 WADSWORTH BLVD.  
 OWNER: RAW NEW  
 LODGE HARVEST LLC.  
 ZONING: PUD  
 (COMMON COST)

**ATTACHMENT 2**

**PUBLIC IMPROVEMENT CONSTRUCTION ACCEPTANCE**

Subject to a two-year warranty the undersigned requests the City and County of Broomfield to accept for maintenance certain improvements associated with Wadsworth Station Filing No. 1 subdivision further described on the Schedule of Improvements attached hereto.

Record Drawings certified by a registered Professional Engineer have been submitted to and accepted by the City & County Engineer.

The undersigned does hereby affirm that all improvements for the above-referenced project are complete, free of liens and have been fully paid for and Owner has fully paid all persons and/or entities having furnished labor and/or materials for the design and construction of the improvements.

I certify that said improvements have been paid for in full. The following contractors/subcontractors and material suppliers are the only ones who have furnished labor or materials on these improvements.

NAME	ADDRESS
E-Z EXCAVATING, INC.	8123 INDIAN PEAKS AVE FREDRICK, CO 80516
HARAL KOCHER SMITH	1120 LINCOLN ST #1000 DENVER, CO 80203
BRYAN CONSTRUCTION, INC	4700 INNOVATION DR #C FT COLLINS, CO 80527

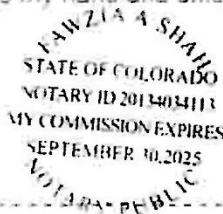
Under penalty of perjury, I swear or affirm that all of the information contained hereon is accurate to the best of my knowledge, information and belief and that I am authorized to make this application and all representation contained herein.

Jeffrey K Sanders  
 Owner Signature \_\_\_\_\_ Date 6/13/2023  
Jeffrey K Sanders  
 Name \_\_\_\_\_ Address 8700 Mountain View Lane  
Manager  
 Title \_\_\_\_\_ Boulder, CO 80303

STATE OF COLORADO  
 COUNTY OF Boulder 155

The foregoing instrument was acknowledged before me this 13th day of June 2023  
 by Jeffrey K Sanders as Manager  
 for Mountain View (Wadsworth Phase ONE) LLC

Witness my hand and official seal  
 (SEAL)



[Signature]  
 Notary Public

**CITY & COUNTY ENGINEER CERTIFICATION** I hereby certify that the improvements have passed final inspection. I recommend accepting the improvements for Broomfield maintenance.

BY [Signature] DATE 8/2/23  
 City & County Engineer



### Cost Participation Table

Total District Cost	\$1,543,135
District Frontage Total (LF)	6,232

Parcel	Frontage (LF)	%	Participation
A - Blackburn Communities, LLC	543	8.71%	\$134,455
B - Mountain View (Wadsworth), LLC	1,402	22.48%	\$347,156
C – Blackburn Communities, LLC	629	10.09%	\$155,750
D - J&C Foundation Inc	200	3.21%	\$49,523
E - JJ Holdings LLC	823	13.21%	\$203,787
F - Generic Storage LLC	296	4.75%	\$73,294
G - Ewing Irrigation Products, Inc.	1,265	20.30%	\$313,233
H - Wadsworth Self Storage	366	5.89%	\$90,627
I - Wadsworth Self Storage	288	4.62%	\$71,313
J - Broomfield Post #9565 VPC of US Inc	376	6.03%	\$93,103
K - HellcatCDM, LLC	44	0.71%	\$10,894
<b>TOTAL</b>	<b>6,232</b>	<b>100.00%</b>	<b>\$1,543,135</b>

Utility		TAB 1		LOW BIDDER'S NAME		TOTAL COST	
Job Name: Wadsworth Station Offsite Water							
Spec Sections	Spec Description	Notes: inc = Included NIC = Not Included					
Subcontractor Selection		BIDDER'S NAMES					
		EZ Ex	Brannan Comp.	Summers	Scott Contracting	Gilbert Contracting (withdraw)	
	Base Bid						
	Mobilization	\$5,022	\$54,267	\$62,143			
	ROW Permit	NIC	NIC	inc			
	Traffic Control	\$31,680	inc	inc			
	Asphalt R&R	\$149,727	inc	inc			
	Minor Concrete R&R	NIC	NIC	inc			
	Utility Pot holding	by HKS Eng.	by HKS Eng.	by HKS Eng.			
	Ex. Utility Crossings	\$33,708	inc	inc			
	12" Water	\$494,804	\$1,052,117	\$982,434			
	12" Gate Valves	\$74,288	inc	\$67,494			
	12" Fittings	\$58,302	inc	\$27,898			
	Fire Hydrant Assemblies & Services	\$88,830	inc	\$110,630			
	2" Irr. Service	\$10,644	inc				
	Utility Drop Crossings	\$58,037	inc	\$54,831			
	Survey, Layout, As-builts	NIC	NIC	NIC			
	Flash Fill (perpendicular cuts only)	\$22,350	inc	inc			
	Material/Compaction Testing	(By Owner)	(By Owner)	(By Owner)			
	Erosion Control	NIC	NIC	NIC			
	Storm Removal		\$15,280				
	Enter "C" If The Bid Is Complete						
	Subtotal	\$1,027,392	\$1,121,664	\$1,305,430			
	Bond Rate	2.00%	1.50%	2.00%			
	Bond Cost (All Subcontractors Over \$250,000)	\$20,548	\$16,825	\$26,109			
	<b>GRAND TOTAL</b>	<b>\$1,047,940</b>	<b>\$1,138,489</b>	<b>\$1,331,539</b>			

## Budget Summary

<b>Item</b>	<b>Costs</b>
Constructions Costs	\$1,338,644
Engineering	\$85,577
CCoB Permit Fees	\$21,684
RAD Application Fee	\$150
Material Testing Costs	\$13,841
Title Reports	\$239
Incidental Fees	\$83,000
<b>TOTAL</b>	<b>\$1,543,135</b>



September 12, 2023

Mountain View Wadsworth Phase ONE, LLC  
Jeff Sanders  
8900 Mountain View Lane  
Boulder, CO 80303

RE: Wadsworth Station Apartments – Offsite Waterline Final Cost

Dear Mr. Sanders:

As requested, below I have summarized the overall cost for the Wadsworth Apartment’s Offsite Waterline installation.

• Original Contract Total Cost	\$	1,258,867
• CO #1 – Xcel Unforeseen Power Relocation	\$	84,906
• CO #2 – City Required Flash Fill Prior to Paving	\$	30,799
• CO #3 – Savings Return	\$	(5,013)
<hr/>		
• Total Cost of Work	\$	<b>1,369,559</b>

This included work associated with the installation of the waterline down 116<sup>th</sup> Street and Wadsworth including the installation of the flow fill required by the CCOB, re-paving of the excavation and traffic control.

If you have any questions, please feel free to contact me.

Thank you,

Brittany M. Broman, Project Manager

**Standard Estimate Report**  
Wadsworth Station Apts

**Offsite Public Water Improvements Update 11.12.20**

**Project name** Wadsworth Station Apts  
110th & Wadsworth  
Broomfield  
CO

**Job size** 265466 GSF

**Duration** 10 Wk

**Report format** Sorted by 'Group phase/Phase'  
'Detail' summary  
Allocate address  
Print item notes



Standard Estimate Report  
Wadsworth Station Apts

Item	Description	Takeoff Qty	Labor		Material		Subcontract	Equipment	Other	Total
			Unit Cost	Amount	Unit Cost	Amount				
<b>A01700 SPECIAL REQUIREMENTS</b>										
<b>A01740 Project Documentation</b>										
1030	As-Built Drawings	0.00	Seis	-	-	-	-	-	-	0
1040	Plan Reproduction	0.00	sets	-	0.00	-	-	-	-	-
1110	Project Sign	0.00	each	0.00	-	0.00	0	-	-	-
7000	ProCore Fees \$1800 per Mill	1.00	mill	-	-	1,800.00 /mill	1,800	-	-	1,800
<b>A01760 Safety and Security</b>										
1025	Site Security Signage	0.00	Mnth	0.00	0.00	-	-	-	-	-
1025	Site Security Service	0.00	Mnth	0.00	0.00	-	-	-	-	-
1030	Temporary Fencing	1.00	LS	-	-	4,530.00 /LS	4,530	-	-	4,530
1040	Temp Access Road	0.00	sqft	-	-	0.00	0	-	-	-
<b>A01785 Project Close Out</b>										
1010	O&M Manuals	0.00	each	-	0.00	-	-	-	-	-
1021	Punchlist: Multifamily (per unit)	0.00	unit	0.00	-	-	-	-	-	-
1031	Warranty Period (Multi-Family)	0.00	unit	0.00	0.00	-	-	-	-	-
2000	Final Cleanup	0.00	soft	-	-	0.00	0	-	-	0
<b>A02000 SITEWORK</b>										
<b>A02100 Site Survey &amp; Layout</b>										
1000	Surveying-Wadsworth Utility Improvements	1.00	LS	-	-	7,850.00 /LS	7,850	HKS	-	7,850
1010	As-Built	1.00	LS	-	-	0.01 /LS	0	HKS	-	0
1020	Progress staking	0.00	acre	-	-	0.00	0	-	-	-
9010	Verify/ Re-establish Layout	0.00	hour	0.00	-	-	-	-	-	-
<b>A02240 Dewatering</b>										
1010	Dewatering	0.00	mnth	-	-	0.00	0	-	-	-
<b>A02370 Erosion Control</b>										
1000	Erosion Control Subcontractor	1.00	LS	-	-	15,000.00 /LS	15,000	Allowance	-	15,000
1005	EC Maintenance & Street Cleaning	0.00	Mnth	0.00	-	0.00	0	-	-	-
1040	Stabilized Staging Area 2/0/2/200	0.00	SF	-	-	0.00	0	-	-	-
1070	Dust Control (water truck)	0.00	week	0.00	0.00	-	-	-	-	0
5000	Stormwater Management Program 6 man hours per month default.	0.00	mnth	0.00	-	-	-	-	-	-
5010	Stormwater Dues	0.00	mnth	-	-	-	-	-	-	0
<b>A02500 Utility Services</b>										
1010	Water Mains - 12", 8", Fittings, etc.	4,504.00	LS	-	-	157,072 /LS	707,451	EZ Excavating	-	707,451
1010	2" Water Service - Irrigation	1.00	LS	-	-	10,644.00 /LS	10,644	EZ Excavating	-	10,644

Standard Estimate Report  
Wadsworth Station Apts

Item	Description	Takeoff Qty	Unit Cost	Labor	Amount	Unit Cost	Material	Amount	Unit Cost	Subcontract	Name	Equipment	Amount	Other	Amount	Total	Amount	
<b>A02500</b>	<b>Utility Services</b>																	
1010	Mob, Pot Hole Etc.	1.00	LS	-	-	-	-	-	5,022.00 /LS	5,022	EZ Excavating	-	-	-	-	5,022	-	
1010	Utility Crossings & Flow Fill	1.00	LS	-	-	-	-	-	56,058.00 /LS	56,058	EZ Excavating	-	-	-	-	56,058	-	
1010	Fire Hydrants & Fittings	1.00	LS	-	-	-	-	-	71,064.00 /LS	71,064	EZ Excavating	-	-	-	-	71,064	-	
1010	Blow-offs, Fill, Flush and Testing	1.00	LS	-	-	-	-	-	24,539.00 /LS	24,539	EZ Excavating	-	-	-	-	24,539	-	
1010	Traffic Control - Pot-holing	1.00	LS	-	-	-	-	-	N/A	-	N/A	-	-	-	-	-	-	
1010	Traffic Control - Road Closures	1.00	LS	-	-	-	-	-	22,092.00 /LS	22,092	EZ Excavating	-	-	-	-	22,092	-	
1010	Mechanical Lowerings	7.00	EA	-	-	-	-	-	0.001 /EA	0	EZ Excavating	-	-	-	0	0	-	
1010	Remove potholing BY OWNER CONSULTANT <i>Stein, Ernie 11.28.20</i>	1.00	LS	-	-	-	-	-	0.01 /LS	0	By Owner	-	-	-	0	0	-	
1060	Utility Sub Bond	2.00	%	-	-	-	-	-	8,969.00 /%	17,938	EZ Excavating	-	-	-	-	17,938	-	
	<b>Utility Services</b>									<b>914,808</b>						<b>914,808</b>		
<b>A02740</b>	<b>Asphalt Pavement</b>																	
1000	Asphalt Subcontractor Off-Site Patching	1.00	LS	-	-	-	-	-	134,300.00 /LS	134,300	EZ Excavating	-	-	-	-	134,300	-	
1000	Asphalt Rotomill	2,555.00	LF	-	-	-	-	-	5.55 /LF	14,181	EZ Excavating	-	-	-	-	14,181	-	
1000	Street Plates	1.00	LS	-	-	-	-	-	1,246.00 /LS	1,246	EZ Excavating	-	-	-	-	1,246	-	
1000	Asphalt Subcontractor Bond	2.00	%	-	-	-	-	-	1,497.50 /%	2,995	EZ Excavating	-	-	-	-	2,995	-	
9060	Pressure Wash Pavement	0.00	sqft	0.00	0.00	0	0.00	0	-	-	-	0	-	-	-	-	-	
	<b>Asphalt Pavement</b>									<b>152,722</b>						<b>152,722</b>		
<b>A02900</b>	<b>Landscaping / Irrigation</b>																	
1000	Landscaping & Irrigation Subcontractor	0.00	sqft	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
1000	L&I Sub Bond	0.00	%	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-
	<b>SITWORK</b>									<b>1,090,380</b>						<b>1,090,380</b>		



Description	Amount	Totals	Hours	Rate	Cost Basis	Cost per Unit	Percent of Total
Labor	70,348		1,502.325 hrs			0.265 /GSF	5.59%
Material							
Subcontract	1,098,085					4.136 /GSF	87.23%
Vehicles	8,485		2,273.975 hrs			0.032 /GSF	0.67%
Other	2,092					0.008 /GSF	0.17%
	<b>1,179,000</b>	<b>1,179,000</b>				<b>4.441 /GSF</b>	<b>93.66%</b>
Payment & Performance Bond					B		
General Liability: Commercial	3,233				L	0.012 /GSF	0.26%
DIC Coverage for OCJP					L		
Builder's Risk: Framed Constr					T		
Weather Protection Allowance					L		
Contractor Contingency *	23,580			2.000 %	T	0.089 /GSF	1.87%
Contractor Fee	53,055			4.500 %	T	0.200 /GSF	4.21%
	<b>79,868</b>	<b>1,258,868</b>		<b>Vehicles</b>		<b>4.742 /GSF</b>	<b>6.34%</b>
<b>Total</b>		<b>1,258,868</b>				<b>4.742 /GSF</b>	<b>100.00%</b>

\* Contingency was spent on traffic control.

# APPLICATION AND CERTIFICATE FOR PAYMENT

Invoice #: 2103212

<b>TO OWNER:</b> Mountain View Wadsworth Phase ONE L 8900 Mountain View Lane Boulder, CO 80303	<b>PROJECT:</b> Wadsworth Stn Apts-Offsite Imp 116th Ave and Wadsworth Blvd. Broomfield, CO 80023	<b>APPLICATION NO:</b> 12	<b>Distribution to:</b> OWNER <input checked="" type="checkbox"/>
<b>FROM CONTRACTOR:</b> Bryan Construction, Inc. 7025 Campus Drive Colorado Spgs, CO 80920	<b>VIA ARCHITECT:</b> Harris Kocher Smith 1120 Lincoln Street Denver, CO 80203	<b>PERIOD TO:</b> 04/30/2023	ARCHITECT <input checked="" type="checkbox"/>
		<b>CONTRACT FOR:</b>	CONTRACTOR <input checked="" type="checkbox"/>
		<b>CONTRACT DATE:</b> 4/2/2021	FIELD <input type="checkbox"/>
		<b>PROJECT NO:</b>	OTHER <input type="checkbox"/>
		<b>JOB NO:</b> 21-032	

## CONTRACTOR'S APPLICATION FOR PAYMENT

Application is made for payment, as shown below, in connection with the Contract. Continuation Sheet is attached.

1. ORIGINAL CONTRACT SUM \$ 1,258,867.25
2. Net change by Change Orders \$ 110,692.13
3. CONTRACT SUM TO DATE (Line 1 + 2) \$ 1,369,559.38
4. TOTAL COMPLETED AND STORED TO DATE (Column G on Attachment) \$ 1,369,559.38

## 5. RETAINAGE:

- a. \_\_\_\_\_ of Completed Work (Column D + E on Attachment) \_\_\_\_\_
- b. \_\_\_\_\_ of Stored Material (Column F on Attachment) \_\_\_\_\_

Total Retainage (Lines 5a + 5b or Total in Column 1 on Attachment) \$ 0.00

6. TOTAL EARNED LESS RETAINAGE (Line 4 Less Line 5 Total) \$ 1,369,559.38

7. LESS PREVIOUS CERTIFICATES FOR PAYMENT (Line 6 from prior Certificate) \$ 1,374,392.80

8. CURRENT PAYMENT DUE \$ -4,833.42

9. BALANCE TO FINISH, INCLUDING RETAINAGE (Line 3 less Line 6) \$ 0.00

CHANGE ORDER SUMMARY	ADDITIONS	SUBTRACTIONS
Total changes approved in previous months by Owner	115,705.54	
Total approved this Month		-5,013.41
<b>TOTALS</b>	115,705.54	-5,013.41
NET CHANGES by Change Order	110,692.13	

The undersigned Contractor certifies that to the best of the Contractor's knowledge, information and belief the work covered by this Application for Payment has been completed in accordance with the Contract Documents, that all amounts have been paid by the Contractor for Work for which previous Certificates for Payment were issued and payments received from the Owner, and that current payment shown herein is now due.

**CONTRACTOR:** Bryan Construction, Inc.

By: \_\_\_\_\_ Date: 4/30/23

State of: Colorado

County of: Broomfield

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_

Notary Public: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

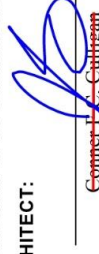
## ARCHITECT'S CERTIFICATE FOR PAYMENT

In accordance with the Contract Documents, based on on-site observations and the data comprising this application, the Architect certifies to the Owner that to the best of the Architect's knowledge, information and belief the Work has progressed as indicated, the quality of the Work is in accordance with the Contract Documents, and the Contractor is entitled to payment of the AMOUNT CERTIFIED.

**AMOUNT CERTIFIED** \_\_\_\_\_ \$ -4,833.42

(Attach explanation if amount certified differs from the amount applied. Initial all figures on this Application and on the Continuation Sheet that are changed to conform with the amount certified.)

## ARCHITECT:

By:  Date: 05/09/2023

\_\_\_\_\_ John R. Stafford

This Certificate is non-negotiable. The AMOUNT CERTIFIED is payable only to the Contractor named herein. Issuance, payment and acceptance of payment are without prejudice to any rights of the Owner or Contractor under this Contract.

**CONTINUATION SHEET**

**Application and Certification for Payment**, containing Contractor's signed certification is attached. In tabulations below, amounts are stated to the nearest dollar. Use Column I on Contracts where variable retainage for line items may apply.

**Application No:** 12  
**Application Date:** 04/30/2023  
**To:** 04/30/2023  
**Architect's Project No.:** 21-032

**Invoice #:** 2103212      **Contract:** 21-032

A Item No.	B Description of Work	C Scheduled Value	D Work Completed		E This Period In Place	F Materials Presently Stored (Not in D or E)	G Total Completed and Stored To Date (D+E+F)	H Balance To Finish (C - G)	I Retainage
			From Previous Application (D + E)	This Period In Place					
1-000	General Conditions	91,853.00	91,853.00				91,853.00	9,185.30	
2-000	Site Work	1,090,379.25	1,090,379.25				1,090,379.25	109,037.93	
17-000	Contingency	76,635.00	76,455.01	179.99			76,635.00	7,645.50	
17-200	Owner Change Order #1	84,906.25	84,906.25				84,906.25	8,490.62	
17-300	Owner Change Order #2	30,799.29	30,799.29				30,799.29	3,079.93	
17-400	Owner Change Order #3	-5,013.41	-5,013.41	-5,013.41			-5,013.41	-137,439.28	
	Retainage Released Previously								
	<b>Totals</b>	1,369,559.38	1,374,392.80	-4,833.42			1,369,559.38	100.00%	

**INVOICE**

<b>From:</b> Bryan Construction, Inc. 7025 Campus Drive Colorado Spgs, CO 80920 (719)632-5355	<b>Invoice:</b> 2103212 <b>Invoice Date:</b> 04/30/2023 <b>Due Date:</b> 04/30/2023
<b>To:</b> Mountain View Wadsworth Phase ONE L 8900 Mountain View Lane Boulder, CO 80303	
<b>Contract:</b> 21-032      Wadsworth Stn Apts-Offsite Imp	

**17-000 - Contingency**

<b>Other</b>			
Contingency	04/30/23		179.99
		<b>Total Other</b>	179.99
	<b>Contingency - Subtotal:</b>		179.99

**17-400 - Owner Change Order #3**

<b>Other</b>			
Savings Split	04/30/23		-5,013.41
		<b>Total Other</b>	-5,013.41
	<b>Owner Change Order #3 - Subtotal:</b>		-5,013.41

---

	<b>GRAND TOTAL</b>	<b>-4,833.42</b>
	<b>Retainage Billed This Invoice</b>	<b>0.00</b>

**PROGRESS PAYMENT RELEASE**

From:  
Bryan Construction, Inc.  
4700 Innovation Dr. Bldg. C  
Ft. Collins, CO 80525

APPLICATION NO: Final

To:  
Mountain View Wadsworth Phase ONE, LLC  
Contact: Jeff Sanders  
8900 Mountain View Lane  
Boulder, CO 80303

PERIOD TO: **April 30, 2023**  
PROJECT NO: 21-032  
PROJECT: Wadsworth Station Apts. – Off Site Waterline

CONDITIONAL RELEASE

Upon receipt by the undersigned of payment from:

Mountain View Wadsworth Phase ONE, LLC (Owner) in  
the sum of: **\$0**

payable to Bryan Construction Inc. and when the payment has been properly endorsed and has been paid by the bank upon which it is drawn, this document shall become effective to release any mechanic's lien, stop notice, or bond right the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished through

**April 30, 2023**

(date) only and does not cover any retentions retained before or after the release date, extras furnished before the release date for which payment has not been received; extras for items furnished after the release date. Rights based upon work performed or items furnished under a written change order, which has been fully executed by the parties prior to the release date are covered by this release. This release of any mechanic's lien, stop notice or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a recession, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this or material was not compensated by the progress payment. Before any recipient of this document relies on it, said party should verify evidence of payment to the undersigned.

BCI Authorized Signature:

Date:



*Michelle E. Martens*  
Date: *June 9, 2023*  
*Commission Expires 6/2/2027*

UNCONDITIONAL RELEASE

The undersigned has been paid and has received progress payment from:

Mountain View Wadsworth Phase ONE, LLC  
(Owner) in the sum of: **\$1,369,559.38**

for labor, services, equipment, or material furnished to Mountain View Wadsworth Phase ONE, LLC on the above referenced job and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or material furnished to Mountain View Wadsworth Phase ONE, LLC through

**April 30, 2023**

(date) only and does not cover any retentions retained before or after the release date; extras furnished before the release date for which payment has not been received, extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice or bond right shall not be otherwise affect the contract rights, including rights between parties to the contract based upon a recession, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor, services, equipment, or release if that furnished labor, services, equipment, or material was not compensated by the progress payment.

BCI Authorized Signature:



September 18, 2023

Matthew Deaver  
City and County of Broomfield  
One DesCombes Drive  
Broomfield, CO 80020  
(303) 438-6238

**RE: Wadsworth Station Apartments  
Public Water Reimbursement Assessment District  
Final Engineering Costs  
HKS Project No. 190208**

Matthew Deaver,

Below is a summary of the final engineering and survey costs related to the public water infrastructure improvements along 116th Avenue and Wadsworth Boulevard. The blue text indicates completed work.

<u>A) Off-Site Improvements Services</u>	<u>Lump Sum Fee</u>
1) Final Utility Report	\$7,200.00
2) Off-Site Topographic Survey for Water Line Improvements	\$4,000.00
3) Off-Site Water Line Improvement Plans	\$15,480.00
4) SUE Investigation & Utility Survey	\$10,820.00
5) SIA Exhibit C	\$900.00
6) Test Holes	\$29,162.00
7) Test Hole Surveying and Engineering	\$8,290.00
<u>Off-Site Improvements Services</u>	<u>Hourly Fee</u>
8) Meetings, Coordination and Processing (including exhibits)	\$5,325.00
9) Construction Phase Services	\$4,400.00
<b>OFF-SITE IMPROVEMENT SERVICES TOTAL</b>	<b><u>\$85,577.00</u></b>

Please contact me if you have any questions or require additional information.

Harris Kocher Smith

John O'Rourke, P.E.  
Colorado Registered PE #43327

RECEIPT— Paid In Full

Attention: Jeff Sanders  
Mountain View (Wadsworth Phase ONE), LLC  
8900 Mountain View Lane  
Boulder, CO 80303  
Date: 6/12/23  
Project: CCOB Wadsworth Off-Site Waterline

Project Management ..... \$83,000

40 Madison St #107 Denver CO 80206



Community Development 303-438-6380

RECEIVED SEP 23 2021  
CITY AND COUNTY OF BROOMFIELD

One DesCombes Drive, Broomfield, CO 80020

Fax: 303-438-6207  
Building Inspections: 303-438-6376

**Customer Receipt**

CCB 07/29  
WATERLINE OFFSITE

Operator: Alicia McCreary

Date: 09/17/2021

Receipt no: 90595

Tender Detail

Classification: E-PPIP-SUB

Project Name: Wadsworth Station  
Apartments - Off Site Water Main in  
Wadsworth Blvd

Paid by: Mountain View (Wadsworth  
Phase One), LLC

Item	Description	Payment	Reference	Paid
BP-20-02086-11 ST-WADSWORTH BLVD	E-PIP Street Cut Fee	CHECK	1056	\$17,885.00
BP-20-02086-11 ST-WADSWORTH BLVD	E-PIP Plan Review Fee	CHECK	1056	\$1,266.61
BP-20-02086-11 ST-WADSWORTH BLVD	E-PIP Inspection Fee	CHECK	1056	\$2,533.23
<b>Total:</b>				<b>\$21,684.84</b>

Transaction Date: 09/17/2021

Time: 15:00:56 MDT



**From:** Dave Richer <[DaveR@earth-engineering.com](mailto:DaveR@earth-engineering.com)>

**Date:** April 28, 2023 at 4:29:35 PM MDT

**To:** jeffrey stein <[jeffsteinde@gmail.com](mailto:jeffsteinde@gmail.com)>

**Subject: Wadsworth Off-Site Improvements - ALL of EEC CMT/QQC Submittals and Invoice Summary Total to date**

Good afternoon Jeff, hope all is well,

Included below is a share link of all of our CMT/QC reports associated with the off-site Wadsworth Boulevard Improvements. Also appended is a summary of all of the invoices we've submitted for this phase of the project. **To date we've invoiced \$13,840.75.** Please review this information and let us know if you have any questions or require additional information.

Here you go:

<https://earth-engineering.sharefile.com/d-s0140211c23b34b1e87026ba27f71faeb>

Thanks and take care!

Dave Richer, P.E.

Senior Geotechnical Engineer/Partner

Earth Engineering Consultants, LLC

4396 Greenfield Drive

Windsor, Colorado 80550

Office No. (970) 545-3908 ext. 803

Direct Line (970) 545-3925

Facsimile (970) 663-0282

Mobile No. (970) 215-2956

e-mail address: [daver@earth-engineering.com](mailto:daver@earth-engineering.com)



## Owners and Encumbrance Report

Date: November 01, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel A  
File No.: NCS-EODEN870-A-CO

### Property Description

County Effective Date: October 27, 2023

Owner: BLACKBURN COMMUNITIES, LLC, a Mississippi limited liability company  
Property: 0 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: Lot 2, WADSWORTH JUNCTION FILING NO. 1 FINAL PLAT, according to the plat recorded August 22, 2023 at Reception No. 2023006608, City and County of Broomfield, State of Colorado.  
County: Broomfield  
Parcel Number: 1717-024-43-002

### Ownership Documents

1. Special Warranty Deed recorded May 25, 2023 at Reception No. 2023003906.

### Encumbrances

1. Deed of Trust, Fixture Filing, Assignment of Leases and Rents and Security Agreement recorded May 26, 2023 at Reception No. 2023003919.

### Statement of Charges

O&E Report: \$5.00  
Copies: \$4.00  
Total Due: \$9.00

End of Report

### **LIMITATION OF LIABILITY**

THIS REPORT CONTAINS INFORMATION OBTAINED FROM PUBLIC RECORDS IN THE COUNTY WHERE THE LAND IS LOCATED WHICH GIVES NOTICE OF CERTAIN MATTERS RELATING TO SAID LAND. EASEMENTS, RIGHTS OF WAY AND COVENANTS, CONDITIONS AND RESTRICTIONS, AND TAX INFORMATION ARE NOT REPORTED. THIS REPORT IS NOT INTENDED TO BE, NOR SHOULD IT BE RELIED UPON AS A LEGAL OPINION OF TITLE OR ANY FORM OF TITLE INSURANCE. THE SOLE LIABILITY ASSUMED BY FIRST AMERICAN TITLE INSURANCE COMPANY, FOR THE INFORMATION CONTAINED WITHIN THE REPORT IS THE FEE THE CUSTOMER PAID FOR THE REPORT. ALL OTHER LIABILITY IS EXPRESSLY DISCLAIMED, INCLUDING LIABILITY IN CONTRACT, TORT OR DUE TO NEGLIGENCE IN THE PRODUCTION OF THIS REPORT.



## Owners and Encumbrance Report

Date: November 01, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel B  
File No.: NCS-EODEN870-B-CO

### Property Description

County Effective Date: October 27, 2023

Owner: Mountain View (Wadsworth Phase Two), LLC, a Colorado limited Liability company and Mountain View (Wadsworth Phase One), LLC, a Colorado limited Liability company  
Property: 11570 & 11516 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: Lots 1 & 2, Wadsworth Station Filing No. 1, City and County of Broomfield, State of Colorado  
County: Broomfield  
Parcel Number: 1717-024-24-001 & 1717-024-24-002

### Ownership Documents

1. Special Warranty Deed recorded December 17, 2020 at Reception No. 2020021707.
2. Special Warranty Deed recorded December 17, 2020 at Reception No. 2020021708.

### Encumbrances

1. Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded July 14, 2021 at Reception No. 2021013193.
2. Notice By Disburser recorded July 14, 2021 at Reception No. 2021013194.

### Statement of Charges

O&E Report: \$5.00  
Copies: \$4.00  
Total Due: \$9.00

End of Report

### **LIMITATION OF LIABILITY**

THIS REPORT CONTAINS INFORMATION OBTAINED FROM PUBLIC RECORDS IN THE COUNTY WHERE THE LAND IS LOCATED WHICH GIVES NOTICE OF CERTAIN MATTERS RELATING TO SAID LAND. EASEMENTS, RIGHTS OF WAY AND COVENANTS, CONDITIONS AND RESTRICTIONS, AND TAX INFORMATION ARE NOT REPORTED. THIS REPORT IS NOT INTENDED TO BE, NOR SHOULD IT BE RELIED UPON AS A LEGAL OPINION OF TITLE OR ANY FORM OF TITLE INSURANCE. THE SOLE LIABILITY ASSUMED BY FIRST AMERICAN TITLE INSURANCE COMPANY, FOR THE INFORMATION CONTAINED WITHIN THE REPORT IS THE FEE THE CUSTOMER PAID FOR THE REPORT. ALL OTHER



## Owners and Encumbrance Report

Date: November 01, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel C  
File No.: NCS-EODEN870-C-CO

### Property Description

County Effective Date: October 30, 2023

Owner: Blackburn Communities, LLC a Mississippi limited liability company  
Property: 11495 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: Lot 1, WADSWORTH JUNCTION FILING NO. 1 FINAL PLAT, according to the plat recorded August 22, 2023 at Reception No. 2023006608, City and County of Broomfield, State of Colorado.  
County: Broomfield  
Parcel Number: 1717-023-43-001

### Ownership Documents

1. Special Warranty Deed recorded May 25, 2023 at Reception No. 2023003902.

### Encumbrances

1. Deed of Trust, Fixture Filing, Assignment of Leases and Rents and Security Agreement recorded May 26, 2023 at Reception No. 2023003919.

### Statement of Charges

O&E Report: \$5.00  
Copies: \$4.00  
Total Due: \$9.00

End of Report

### **LIMITATION OF LIABILITY**

THIS REPORT CONTAINS INFORMATION OBTAINED FROM PUBLIC RECORDS IN THE COUNTY WHERE THE LAND IS LOCATED WHICH GIVES NOTICE OF CERTAIN MATTERS RELATING TO SAID LAND. EASEMENTS, RIGHTS OF WAY AND COVENANTS, CONDITIONS AND RESTRICTIONS, AND TAX INFORMATION ARE NOT REPORTED. THIS REPORT IS NOT INTENDED TO BE, NOR SHOULD IT BE RELIED UPON AS A LEGAL OPINION OF TITLE OR ANY FORM OF TITLE INSURANCE. THE SOLE LIABILITY ASSUMED BY FIRST AMERICAN TITLE INSURANCE COMPANY, FOR THE INFORMATION CONTAINED WITHIN THE REPORT IS THE FEE THE CUSTOMER PAID FOR THE REPORT. ALL OTHER LIABILITY IS EXPRESSLY DISCLAIMED, INCLUDING LIABILITY IN CONTRACT, TORT OR DUE TO NEGLIGENCE IN THE PRODUCTION OF THIS REPORT.



First American Title Insurance Company - NCS  
1380 17th Street  
Denver, Colorado 80202  
Phone: (303)876-1112 Fax:(877)235-9185

## Owners and Encumbrance Report

Date: November 02, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel D  
File No.: NCS-EODEN870-D-CO

### Property Description

County Effective Date: October 30, 2023

Owner: J & C Foundations, Inc.  
Property: 11515 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: Lot 1, Block 1 of Wadsworth Subdivision Filing No. 1, City and County of Broomfield, State of Colorado.  
County: Broomfield  
Parcel Number: 1717-023-40-001

### Ownership Documents

1. Warranty Deed recorded August 26, 1992 at Reception No. 92105335 (Jefferson County Records).

### Encumbrances

1. Deed of Trust recorded January 7, 2003 at Reception No. F1646674 (Jefferson County Records).

### Statement of Charges

O&E Report: \$5.00  
Copies: \$2.00  
Total Due: \$7.00

End of Report

### **LIMITATION OF LIABILITY**

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***Please send Payment to: Accounts Receivable Department  
PO Box 677858  
Dallas, TX 75267-7858***



## Owners and Encumbrance Report

Date: November 02, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel E  
File No.: NCS-EODEN870-E-CO

### Property Description

County Effective Date: October 30, 2023

Owner: JJ Holdings LLC, a Colorado limited liability company  
Property: 11575 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: A portion of land located in the SW 1/4 of Section 2, Township 2 South, Range 69 West of the 6th P.M., as more particularly described in the Warranty Deed recorded on June 11, 2020 at Reception No. 2020008034.  
County: Broomfield  
Parcel Number: 1717-023-00-001

### Ownership Documents

1. Warranty Deed recorded June 11, 2020 at Reception No. 2020008034.

### Encumbrances

1. Deed of Trust recorded June 11, 2020 at Reception No. 2020008035.
2. Assignment of Rents recorded June 11, 2020 at Reception No. 2020008036.

### Statement of Charges

O&E Report: \$5.00  
Copies: \$4.00  
Total Due: \$9.00

End of Report

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## Owners and Encumbrance Report

Date: November 02, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel F  
File No.: NCS-EODEN870-F-CO

### Property Description

County Effective Date: October 30, 2023

Owner: Generic Storage, LLC, a Colorado limited liability company

Property: 7780 & 7600 West 116th Avenue Broomfield, CO 80020

Legal Description: Parcel I: A portion of the NE 1/4 of the SW 1/4 of Section 2, Township 2 South, Range 69 West of the 6th P.M., as more particularly described in the Bargain and Sale Deed recorded on June 29, 2012 at Reception No. 2012007948 in the City and County of Broomfield, State of Colorado.

Parcel II: A parcel of land in the NE 1/4 of the SW 1/4 of Section 2, Township 2 South, Range 69 West, more particularly described in the Personal Representative's Deed recorded June 7, 2017 at Reception No. 2017006921 in the City and County of Broomfield, State of Colorado.

County: Broomfield

Parcel Number: 1717-023-30-001 and 1717-023-00-023

### Ownership Documents

1. Bargain and Sale Deed recorded June 29, 2012 at Reception No. 2012007948.
2. Personal Representative's Deed recorded June 7, 2017 at Reception No. 2017006921.

### Encumbrances

#### Statement of Charges

O&E Report: \$5.00

Copies: \$0.00

Total Due: \$5.00

End of Report

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First American Title Insurance Company - NCS  
1380 17th Street  
Denver, Colorado 80202  
Phone: (303)876-1112 Fax:(877)235-9185

## Owners and Encumbrance Report

Date: November 02, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel G  
File No.: NCS-EODEN870-G-CO

### Property Description

County Effective Date: October 30, 2023

Owner: Ewing Irrigation Products, Inc., a Nevada corporation  
Property: 11605 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: Parcel A of the EXEMPTION SURVEY SEC. 2, T2S, R69W, E35-9-95 AMENDMENT NO. 1, as recorded on April 16, 1996 at Reception No. F0217250, Jefferson County records, City and County of Broomfield, State of Colorado, EXCEPTING therefrom that portion conveyed to the City and County of Broomfield in Warranty Deed recorded on February 13, 2009 at Reception No. 2009001596, Broomfield County Records, City and County of Broomfield.  
County: Broomfield  
Parcel Number: 1717-022-10-001

### Ownership Documents

1. Special Warranty Deed recorded July 13, 2021 at Reception No. 2021013060.

### Encumbrances

### Statement of Charges

O&E Report: \$5.00  
Copies: \$4.00  
Total Due: \$9.00

End of Report

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Dallas, TX 75267-7858***





## Owners and Encumbrance Report

Date: November 02, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcels H & I  
File No.: NCS-EODEN870HI-CO

### Property Description

County Effective Date: October 30, 2023

Owner: Wadsworth Self Storage LLC, a Colorado limited liability company  
Property: 11600 & 11650 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: That part of the West 1/2 of the NE 1/4 of Section 2, Township 2 South, Range 69 West of the 6th P.M., more particularly described in that Special Warranty Deed recorded March 11, 2013 at Reception No. 2013003548, City and County of Broomfield, State of Colorado.  
County: Broomfield  
Parcel Number: 1717-021-00-014 and 1717-021-00-015

### Ownership Documents

1. Special Warranty Deed recorded March 11, 2013 at Reception No. 2013003548.

### Encumbrances

1. Deed of Trust recorded September 7, 2012 at Reception No. 2012011274.
2. Deed of Trust recorded April 5, 2021 at Reception No. 2021052340.
3. Assignment of Rents recorded April 5, 2021 at Reception No. 2021052341.
4. Deed of Trust recorded November 10, 2021 at Reception No. 2021020437.

### Statement of Charges

O&E Report: \$5.00  
Copies: \$8.00  
Total Due: \$13.00

End of Report

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## Owners and Encumbrance Report

Date: November 02, 2023

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: Wadsworth Station - Parcel J  
File No.: NCS-EODEN870-J-CO

### Property Description

County Effective Date: October 30, 2023

Owner: Broomfield Post No. 9565, Veterans of Foreign Wars of the United States, Incorporated, a Colorado corporation

Property: 11700 Wadsworth Boulevard Broomfield, CO 80020

Legal Description: A part of the SW 1/4 of the NE 1/4 of Section 2, Township 2 South, Range 69 West of the 6th P.M., as described in that Warranty Deed recorded June 15, 1970 in Book 2187 at Page 307 at Reception No. 373518 (Jefferson County records), City and County of Broomfield, State of Colorado.

County: Broomfield

Parcel Number: 1717-021-00-013

### Ownership Documents

1. Warranty Deed recorded JUNE 15, 1970 in Book 2187 at Page 307 at Reception No. 373518 (Jefferson County records).

### Encumbrances

1. None.

### Statement of Charges

O&E Report: \$5.00

Copies: \$0.00

Total Due: \$5.00

End of Report

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First American Title Insurance Company - NCS  
1380 17th Street  
Denver, Colorado 80202  
Phone: (303)876-1112 Fax: (877)235-9185

## Owners and Encumbrance Report

Date: August 23, 2024

Mountain View Capital, LLC  
8900 Mountain View Lane  
Boulder, CO 80303

Reference: 11730 Wadsworth - O&E  
File No.: NCS-1230522-CO

### Property Description

County Effective Date: August 20, 2024 at 5:00 PM

Owner: HellcatCDM LLC, a Colorado limited liability company  
Property: 11730 Wadsworth Boulevard Broomfield, CO 80020  
Legal Description: See Exhibit A on Special Warranty Deed recorded January 17, 2018 at Reception No. 2018000555, and as referenced on Exemption Survey Sec 2, T2S, R69W, E53-9-91 recorded January 17, 1992 at Reception No. 92006111  
County: Broomfield  
Parcel Number: 1717-021-00-011/R2082342

### Ownership Documents

1. Special Warranty Deed recorded January 17, 2018 at Reception No. 2018000555.

### Encumbrances

1. Deed of Trust recorded January 17, 2018 at Reception No. 2018000557.
2. Assignment of Rents recorded January 17, 2018 at Reception No. 2018000558.

### Statement of Charges

O&E Report: \$5.00  
Copies: \$4.00  
Total Due: \$9.00

End of Report

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## Parcel Ownership Addresses

NCS-EODEN870-A-CO:

Blackburn Communities LLC – 825 Sisk Ave, Ste 200, Oxford MS 38655

NCS-EODEN870-B-CO:

Mountain View (Wadsworth Phase ONE), LLC and Mountain View (Wadsworth Phase TWO), LLC – 8900 Mountain View Lane, Boulder CO 80303

NCS-EODEN870-C-CO:

Blackburn Communities LLC – 825 Sisk Ave, Ste 200, Oxford MS 38655

NCS-EODEN870-D-CO:

J&C Foundations Inc – P.O. Box 308, Broomfield CO, 80038

NCS-EODEN870-E-CO:

JJ Holdings LLC – 9540 W. 82<sup>nd</sup> PL, Arvada CO 80005

NCS-EODEN870-F-CO:

Generic Storage LLC – P.O. Box 371183, Denver CO 80237

NCS-EODEN870-G-CO:

R F Holdings LLC – P.O. Box 205 8394 US Hwy 85, FT Lupton CO 80621

NCS-EODEN870-HI-CO:

Wadsworth Self Storage – 5300 DTC PKWY, STE 280, Greenwood Village CO 80111

NCS-EODEN870-J-CO:

Broomfield Post #9565 VFW of US Inc – 11700 Wadsworth Blvd, Broomfield CO 80020

NCS-1230522-CO:

HellcatCDM LLC – 8294 Dressage Road, Littleton, CO 80125



**I. Ordinance for Tree Preservation - First Reading**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6I.
Presented By	
Kate Mack, Senior Landscape Architect	
Community Goals	
<input checked="" type="checkbox"/> Growing Greener <input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#) and visit [BroomfieldVoice.com](http://BroomfieldVoice.com)  
[View Presentation](#)

Staff is proposing tree preservation plan requirements related to new development and redevelopment for residential, commercial, and industrial uses, that will implement tree protection and mitigation processes. The revised regulations are intended to also provide specific tree preservation requirements for significant trees, healthy trees, and natural areas; definitions of protective barrier materials and areas, terminology and tree preservation principles; and requirements for mitigation and tree preservation plans.

### **Attachments**

[Tree Preservation Code 1st Reading Council Memo.pdf](#)

[Ordinance 2240\\_ Tree Preservation Code 11.12.2024 - First Reading.pdf](#)

# Summary

[View Correspondence](#)  
[View Presentation](#)  
[BroomfieldVoice.com](http://BroomfieldVoice.com)

This memorandum provides an overview of the proposed updates to the Broomfield Municipal Code (BMC) with respect to tree preservation and mitigation requirements that would be applicable to new residential, commercial, industrial and Broomfield developments during construction and post-construction activities. Tree preservation is currently not captured through any plans, and is not a required component of site development plans or the development review process.

Staff is proposing tree preservation plan requirements related to new development and redevelopment for residential, commercial, and industrial uses, that will implement tree protection and mitigation processes. The proposed regulations are intended to also provide specific tree preservation requirements for significant trees, healthy trees, and natural areas; definitions of protective barrier materials and areas, terminology and tree preservation principles; and requirements for mitigation and tree preservation plans.

Proposed Ordinance No. 2240 would approve the Tree Preservation Code on first reading and schedule a public hearing and second reading on December 10, 2024.

## Financial Considerations

**Management of the Program:** The management of the proposed tree preservation code amendments are not anticipated to have a significant impact on the City and County of Broomfield's finances. The initial administration of the ordinance will be led by the Senior Landscape Architect. The Senior Landscape Architect, Forester, and forestry staff will all be involved in implementation and administration of the code. It is anticipated that there will be a need for additional staff resources in the future when considering this proposed code amendment together with the administration of the drought tolerant landscape requirements adopted in 2023 and the anticipated wildland urban interface requirements that will be mandated by [State Bill SB 23-166](#) by October 2025. Any need for additional resources will be driven by the pace of development, the number of projects that involve preservation of trees requiring oversight during construction, and the complexity of the future wildland urban interface requirements. Although not needed initially, the additional resources would likely include at least one FTE to assist with field inspections, as early as 2026 depending on the complexity of the wildland urban interface code requirements.

**Costs to Broomfield for CCOB Projects:** The tree preservation requirements will apply to future Broomfield projects that may impact existing trees. There could be financial impacts for capital improvement program (CIP) projects to adhere to the requirements of the tree preservation regulations. Budgets for CIP are increasing and this may further impact some projects. The tree preservation requirements would specify what the financial impact will be early in the process since there would be a standard fee and practice that could be included when estimating projects. Since each project is individual and has unique impacts, there is no method for being able to estimate the overall impact on city projects. The ordinance would apply special requirements for City-owned properties and other government infrastructure projects (such as CDOT

or Mile High Flood District). These projects or properties would be limited to on-site tree replacement or relocation of viable trees and any required payments of tree inch value lost are waived.

**Revenue for CCOB:** The proposed ordinance would create a fee that would be collected if it is not feasible for an owner/developer to place required replacement trees onsite, on another site or on public lands and/or relocation of existing trees is not possible. This fee would be placed in an existing account under a dedicated project code and then could be utilized by Parks for tree planting (including but not limited to tree support such as maintenance, installation of drip lines and drainage) and preservation programs (including the creation of new woodland areas, underplantings as part of a tree planting program, and other planting activities that support the purposes of this proposed ordinance), public education programs regarding trees, and other activities in support of the administration of this chapter.

## Prior Council or Other Entity Actions

- [August 22, 2023](#) City Council approved [Ordinance No. 2215](#), which repealed and replaced BMC 17-70 Residential Landscape Requirements with Chapter 17-70 Landscape Requirements for New Development.
- [May 21, 2024](#) City Council Study Session regarding the tree preservation code.

## Boards and Commissions Prior Actions and Recommendations

- On March 11, 2024 the draft of the proposed tree preservation code was presented to the Advisory Committee for Environmental Sustainability (ACES). ACES is in support of adopting the tree preservation code.
- On April 25, 2024 the draft of the proposed tree preservation code was presented to the Open Space & Trails Advisory Committee (OSTAC). OSTAC is in support of adopting the tree preservation code.
- On May 15, 2024 the draft of the proposed tree preservation code was presented to the Parks, Recreation & Senior Services Advisory Committee (PRSSAC). PRSSAC is in support of adopting the tree preservation code.

## Proposed Actions / Recommendations

It is recommended that:

- Ordinance No. 2240 be adopted on first reading and ordered published in full;
- The second and final reading of the Ordinance will be scheduled for December 10, 2024, and staff is proposing an effective date of January 1, 2025.

## Alternatives

Do not adopt Ordinance No. 2240 on first reading and do not schedule the public hearing.

## Project Website

<https://www.broomfieldvoice.com/treepreservation>

## Public Comment

[Correspondence Folder](#)

## How to Submit Public Comments on this Proposal

Email directly to [planning@broomfield.org](mailto:planning@broomfield.org)

## Background

During the City Council [May 21, 2024 study session](#), staff introduced the proposed Tree Preservation requirements to City Council. The [BMC landscape code](#) does not incorporate tree preservation practices which are becoming more commonplace throughout the Front Range and Colorado. There were a number of factors driving the tree preservation code updates: firstly, Broomfield does not have a standard structure in place to hold developers and contractors accountable for unauthorized tree removals or required replacement for trees damaged during the construction process. Secondly, Broomfield anticipates a rise in redevelopment and infill development resulting in potential impacts to existing trees. Lastly, updating the BMC to promote tree preservation will lead to more attractive and functional public and private spaces, creating environments that are visually appealing and enhance quality of life for residents.

The proposed [2024 Open Space, Parks, Recreation, and Trails Master Plan](#) (the “OSPRT Plan”) encourages the adoption of Tree Preservation Standards. This proposed Tree Preservation Code incorporates the intent of this OSPRT Plan tree preservation standards, and expands on the preservation requirements and applicability. By updating this code, Broomfield is able to not only promote tree preservation, but help guide the aesthetics and design of new development for the well-being of both the environment and the community. As part of updating the Landscape code, a [Water Wise Plant List](#) was created.

## Comparison with Other Front Range Cities

In drafting the code, staff researched other local jurisdictions with tree preservation codes or plans. The tree preservation ordinances that were reviewed and compared were from the following municipalities:

- [Arvada](#)
- [Aurora](#)
- [Denver](#)
- [Fort Collins](#)
- [Westminster](#)

This proposed code aligns with the current codes these local jurisdictions have in place.

## Current Broomfield Process

Currently there are no standardized requirements for tree preservation, mitigation, and replacement. It is left to the discretion of the developer or designer to keep or remove trees, and if any are to be replaced. If trees that have been marked to remain in place but are damaged during construction, Broomfield does not have a plan of recourse to hold contractors accountable. At this time, during the plan review process, staff can request mitigation, however there are no regulations or requirements in place to implement. Below are



two recent projects where standardized tree preservation and mitigation requirements would have been beneficial.

### **Nissen Channel Improvements**

The improvements that were constructed for the Nissen Channel required numerous trees and shrubs to be removed. While some trees were marked for protection, the vast majority along the channel were removed. Many of these trees were native and further added in the stormwater management in the area. The landscape plan provided for the improvements did show 66 deciduous trees to be planted, along with 860 willow stakes to be installed to recreate the natural feel. However, there was no formal tree preservation and mitigation standards applied to this project.

### **Broomfield Town Square**

As part of the Broomfield Town Square development review process, it was determined that approximately 247 existing trees would need to be removed as part of the new development and related floodplain improvements. While the Site Development Plan shows landscaping, including new trees and shrubs, Broomfield did not have an official required mitigation requirement for the number (or equivalent inches) of trees to be removed. This is a great example of a development that could have benefited from the proposed tree preservation ordinance requirements. The proposed ordinance will also promote a consistent approach to tree preservation throughout Broomfield.

## **Applicable City and County of Broomfield Plans**

Tree preservation was identified as an area where code revisions were recommended in the Open Space, Parks, Recreation and Trails Master Plan of 2024. Community-wide development standards are identified in the Comprehensive Plan as follows:

- Goal LU-I: Development Standards - Use development standards and guidelines to help realize the community's overall vision and goals.
- Goal CF-A: Community form and Identity - Build on the established physical framework to strengthen Broomfield's sense of community identity by identifiably connecting neighborhoods, open lands, and residential and commercial areas, and by enhancing natural and human-made features.

# Proposal and Discussion

Staff has drafted a new code for Chapter 17-71 ([Tree Preservation Code](#)). While Broomfield is making considerable investments in improving landscape requirements for new development and redevelopment, there is minimal code related to restricting tree removal and replacement.

The following table lists what the proposed code update would and would not do.

What this PROPOSES to do:	What this DOES NOT propose to do:
<ul style="list-style-type: none"> <li>• Provide requirements related to tree preservation, mitigation, relocation and removal</li> </ul>	<ul style="list-style-type: none"> <li>• Prohibit tree removal within the City and County of Broomfield</li> </ul>
<ul style="list-style-type: none"> <li>• Protect significant or exceptional specimen trees with Broomfield</li> </ul>	<ul style="list-style-type: none"> <li>• Require replacement of dead, hazardous or invasive trees with new development or redevelopment</li> </ul>
<ul style="list-style-type: none"> <li>• Apply to new construction (residential or non-residential) and remodels over 65% gross floor or parking lot increases over 50%</li> </ul>	<ul style="list-style-type: none"> <li>• Require modifications of existing sites as constructed or previously approved prior to the effective date of the ordinance - proposed for January 1, 2025</li> </ul>
<ul style="list-style-type: none"> <li>• Apply to all properties within CCOB including city-owned properties, Parks and Open Spaces and public land dedications*</li> </ul>	<ul style="list-style-type: none"> <li>• Require existing single-family detached residences and existing or new ADU's to adhere to the requirements</li> </ul>

\* City-owned properties and other government infrastructure projects (such as CDOT or Mile High Flood District) are limited to on-site tree replacement or relocation of viable trees and any required payments of tree inch value lost are waived.

## Overview of the Proposed Tree Preservation Code

The proposed code would utilize best forestry practices and establish guidelines for tree preservation while facilitating responsible land development in the City and County of Broomfield. This includes both the addition of trees wherever feasible and the utmost effort in maintaining the existing tree population. A tree preservation plan is to be submitted along with the Site Development Plan (SDP), Urban Renewal Site Plan (URSP) or building permit during the development process for all applicable properties as described below. This plan should identify all existing trees onsite and within 50' of the site that have a Diameter at Breast Height (DBH) of four inches (4") or larger. A chart specifying size, species, condition and Proposed mitigation actions for these trees should be included. Additionally, the plan must outline the proposed methods, materials and a timeline for implementing the preservation strategies.

These measures aim to achieve multiple benefits for the community, such as:

- *Canopy Preservation:* Sustaining the tree canopy throughout the community to enhance and preserve the air quality. Trees filter air pollutants and replenish the atmosphere with oxygen.
- *Noise Reduction:* Trees act as natural barriers, reducing noise levels and creating a quieter environment.
- *Energy Efficiency:* Properly placed trees on properties serve as windbreaks and provide shade, contributing to the reduction of energy consumption.
- *Soil Protection:* Tree roots help prevent topsoil erosion, reducing stormwater runoff and preserving the quality of the soil.
- *Wildlife Habitat:* Trees offer habitat and food sources for birds and other wildlife, contributing to the preservation and enhancement of nesting areas and aiding in natural insect control.
- *Public Resource:* Trees are recognized as a valuable public resource that enriches the quality of life, maintains the unique character of the community, and contributes to its historical and aesthetic appeal. Additionally, they play a role in economic stability by attracting visitors and businesses.

The tree preservation requirements of the ordinance will apply to the following properties:

- All new construction on a previously vacant or undeveloped property, including residential and non-residential and on properties owned by the City and County of Broomfield, that are to be constructed by a developer, property owner or their contractors;
- All redevelopment construction projects that cumulatively increase the gross floor area of the lot by sixty-five percent (65%) or more;
- The partial or total redevelopment of a parcel, including demolition and new construction;
  - Redevelopment of a parcel means the demolition of an existing structure or building including any site disturbance, such as earthwork or grading, in anticipation of new development.
- Expansion of parking lots by more than 50% of the existing parking lot area;
- All public land dedications as required by the 2024 Open Space, Parks, Recreation and Trails (OSPRT) Plan and public lands dedications in accordance with B.M.C. 16-28-120, as amended.

This tree preservation chapter is intended only to cover properties during construction and post-construction until final acceptance in accordance with Broomfield Standards and Specifications.

The following are exempted from the requirements of the ordinance:

- Accessory Dwelling Unit (ADU) construction on single-unit residential properties.
- Public land dedications or city and county owned property with specific Open Space characteristics of the subject property may be exempt if approved by the City and County Manager or their designee.
- Site development plans, urban renewal site plans, building permits or other development process approved prior to the effective date of this chapter 17-71 shall follow the plans as approved.

Some highlights of the regulations are outlined below. This section is intended to be a very brief summary; please consult the complete proposed code for more specifics and details:

- **Condition Rating for Tree Preservation.** The proposed code outlines requirements for evaluating the health and structural condition of trees based on a 1 to 6 rating scale where Condition 1 refers to trees that are in excellent condition and typical of the species through to Condition 6 that refers to trees that are dead. Significant trees and prohibited species are also defined.
- **Mitigation Requirements.** Removed trees are to be replaced at a rate to equal the tree inches lost in removal. Replacement trees are to be no less than two inches (2") or more than three inches (3") in caliper and are to be the same or higher quality species than that which was removed. If on-site tree replacement is not possible, replacement trees can be installed on a different approved site, public lands, or cash-in-lieu to the Tree Preservation Fund. Mitigated trees are in addition to standard landscape requirements.

Example: Removal of one 8 inch (8") tree would require replacement of 8 inches of tree. This could be met by installing four two-inch (2") trees.

- **Protection of Existing Trees During the Construction Process.** A protective barrier consisting of a 6' tall chain link fence is to be installed enclosing tree protection zones prior to the start of construction. No stockpiling of soil, vehicle parking, or compaction activities are allowed within the tree protection zone. If existing trees are damaged during the construction process, all efforts to repair are to be immediately undertaken and damage penalties will be calculated. If damaged beyond repair, mitigation requirements will be assessed.
- **Submittals.** A Tree Protection Plan is to be submitted in conjunction with the SDP/URSP or building permit. All trees four inches (4") or larger on the site and within 50' of the site boundaries are to be identified. Proposed methods, materials and schedule for implementing tree maintenance and protection are to be included. A construction schedule, maintenance schedule and watering schedule are also to be submitted.

## **Inspection Process and Administration of Tree Preservation Code**

Broomfield currently does limited tree inspections. Public parks constructed with new developments are inspected by Broomfield staff from the Parks, Recreation, and Senior Services Department. These inspections are primarily to verify the conditions trees proposed to be planted. They also verify tree planting was done correctly and appropriate staking is completed.

With the requirements proposed with the new tree preservation code and the movement toward specific tree preservation materials and construction specifications, inspections will need to be completed by the landscape architect and/or Broomfield staff from the Parks, Recreation, and Senior Services Department. An existing conditions inspection, preservation methods installation inspection, along with periodic inspections while on-site during construction, and a final inspection prior to removal of preservation methods will be completed.

Additional staffing would be required if additional periodic inspections during construction are requested or if single-family residential lot landscaping is inspected, which is not proposed at this time.

Public land dedications, city-owned properties are subject to this code unless the property is specifically exempted based on the specific Open Space characteristics of the property.

## Public Engagement

A Broomfield Voice page has been created. This page provides information regarding the proposed tree preservation requirements. Broomfield Voice provides a venue for comments and concerns regarding the proposed amendments to Chapter 17 of the Broomfield Municipal Code, where community engagement is encouraged. Comments received will be gathered and summarized as part of the public hearing process. This webpage also includes visual renderings of examples of tree preservation. Staff has utilized the weekly community update and social media posts to encourage engagement with the [Broomfield Voice page](#).

## Public Outreach

Staff hosted a virtual open house on June 24, 2024 to introduce the proposed changes to residents, developers, HOAs, and business community members. Examples of what tree preservation requirements and mitigation options look like were provided via visual renderings during this open house. Two individuals attended the meeting and asked a few questions about preparing the tree inventory and application of the code. A summary of this meeting can be found [here](#).

There will be an opportunity at the public hearing for the second reading of the proposed ordinance for additional public comments to be provided for City Council's consideration.

# ORDINANCE NO. 2240

An ordinance to add Chapter 17-71 to the Broomfield Municipal Code to establish Tree Preservation and Mitigation Measures During Land Development and Redevelopment

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

## Section 1.

Chapter 17-71, Tree Preservation and Mitigation Measures During Land Development and Redevelopment, is hereby added to the Broomfield Municipal Code as follows:

### Chapter 17-71 - Tree Preservation and Mitigation Measures During Land Development and Redevelopment

**17-71-010 - Purpose.** The purpose of this chapter is to establish requirements for tree preservation while facilitating responsible land development in the City and County of Broomfield. This includes both the addition of trees wherever feasible and the utmost effort in maintaining the existing tree population. These measures aim to achieve multiple benefits for the community, including:

- (A) *Canopy Preservation:* Sustaining the tree canopy throughout the community to enhance and preserve the air quality. Trees filter air pollutants and replenish the atmosphere with oxygen.
- (B) *Noise Reduction:* Trees act as natural barriers, reducing noise levels and creating a quieter environment.
- (C) *Energy Efficiency:* Properly placed trees on properties serve as windbreaks and provide shade, contributing to the reduction of energy consumption.
- (D) *Soil Protection:* Tree roots help prevent topsoil erosion, reducing stormwater runoff and preserving the quality of the soil.
- (E) *Wildlife Habitat:* Trees offer habitat and food sources for birds and other wildlife, contributing to the preservation and enhancement of nesting areas and aiding in natural insect control.
- (F) *Public Resource:* Trees are recognized as a valuable public resource that enriches the quality of life, maintains the unique character of the community, and contributes to its historical and aesthetic appeal. Additionally, they play a role in economic stability by attracting visitors and businesses.

### 17-71-020 - Applicability.

- (A) *General.* The tree preservation requirements of this chapter 17-71 shall apply to the following properties:

- (1) All new construction, including residential and non-residential and on properties owned by the City and County of Broomfield, that are to be constructed by a developer, property owner or their contractors;
- (2) All construction projects that cumulatively increase the gross floor area of the lot by sixty-five percent (65%) or more;
- (3) The partial or total redevelopment of a parcel, including demolition and new construction;
  - (i) Redevelopment of a parcel means the demolition of an existing structure or building including any site disturbance, such as earthwork or grading, in anticipation of new development.
- (4) Expansion of parking lots by more than 50% of the existing parking lot area;
- (5) All public land dedications as required by the 2024 Open Space, Parks, Recreation and Trails (OSPRT) Plan and public lands dedications in accordance with B.M.C. 16-28-120, as amended.

This tree preservation chapter is intended only to cover properties during construction and post-construction until final acceptance in accordance with Broomfield Standards and Specifications.

- (B) *Exempt Properties.* The following properties are exempt from the requirements of this chapter 17-71:
- (1) Accessory Dwelling Unit (ADU) construction on single-unit residential properties.
  - (2) Public land dedications or city and county owned property with specific Open Space characteristics of the subject property may be exempt if approved by the City and County Manager or their designee.
  - (3) Site development plans, urban renewal site plans, building permits or other development process approved prior to the effective date of this chapter 17-71 shall follow the plans as approved, without complying with the mitigation standards set forth below.

**17-71-030 - Definitions.** As used in this chapter, unless the context clearly requires otherwise, the following words and terms shall have the meanings set forth in this section:

- (A) *Aggregate Diameter* means the combined diameter of a multiple trunk tree measured at breast height.

- (B) *Caliper* means the diameter of a tree trunk six inches (6”) above the existing grade or proposed planted grade. Caliper is usually used in reference to nursery stock.
- (C) *Critical Root Zone (CRZ)* means the distance from the trunk that equals one and one half foot (1.5’) for every inch of the tree’s diameter.
- (D) *City and County Forester* means Broomfield’s Forestry Division responsible for trees and shrubs in public parks, parkways, and other public property. Broomfield’s right-of-way and street trees are under regulation of the City and County Forester.
- (E) *Development Process* means the intent to construct upon, improve, or modify any property within the City and County of Broomfield, whether governed by a Site Development Plan (SDP) or Urban Renewal Site Plan (URSP) or not.
- (F) *Diameter at Breast Height (DBH)* means the standard measurement used in forestry and tree studies to assess the size of a tree trunk. DBH is determined by measuring the diameter of the tree trunk at a standardized height, which is typically four and one half (4.5) feet above the ground level. This measurement is taken using a tape measure or calipers and is commonly used as an indicator of a tree’s size, growth, and maturity.
- (G) *Drip Line* means the outermost edge of the tree’s canopy or branch spread. The area within a tree’s drip line is all the ground under the total branch spread.
- (H) *Intent* means having the mind, attention, or will to develop, modify, construct or improve real property within the City and County of Broomfield.
- (I) *Mitigation* means the replacement of trees removed from a site, the relocation of existing trees, the planting of new trees to compensate for caliper inches lost, or cash payments to the Tree Preservation Account as directed in this section when trees are impacted due to the development process.
- (J) *Preservation* means the act of keeping existing trees safe from injury, harm or destruction during the development process.
- (K) *Relocation* means the practice of moving an existing tree to another site or other location within the same site.
- (L) *Significant Trees*. Significant Trees includes all of the following:
  - (1) Private protected tree, which is any tree with:
    - (i) A DBH of six inches (6”) or more located on any lot within twenty feet of a street right-of-way (including an approved private street or other access easement), or



- (ii) A tree with a DBH of eight inches (8") or more located within ten feet of any other property line, or
  - (iii) A tree with a DBH of twelve inches (12") or more located elsewhere on the lot or tract.
- (2) Public protected tree, which is any tree located on lands owned by the city, or other governmental agencies or authorities, or any land upon which easements are imposed for the benefit of the city, or other governmental agencies or authorities, or upon which other ownership control may be exerted by the city, or other governmental agencies or authorities. This includes rights-of-way and privately maintained trees within the public right-of-way, parks, open space, public areas and easements for drainage, sewer, water and other public utilities, with:
  - (i) A DBH of six inches (6") or more located within a city or other governmental right-of-way, or
  - (ii) A DBH of six inches (6") or more and located on any lot within twenty feet (20') of a street right-of-way, or
  - (iii) A DBH of eight inches (8") or more located on any lot within ten feet (10') of any other property line, or
  - (iv) A DBH of twelve inches (12") or more located elsewhere on the lot.
  - (v) Exceptional specimen tree, which is any tree which is determined by the City and County Forester to be of unique and intrinsic value to the general public because of its size, age, historic association or ecological value or any tree designated a Colorado State Champion, United States Champion or World Champion by the American Forestry Association. The City and County Forester shall keep a record of all specimen trees so designated and their location.
- (M) *Tree Preservation Account* means an account established for the City and County of Broomfield for the purposes of furthering tree maintenance and tree replacement. The monies received as fees in lieu of mitigation, as described in B.M.C. 17-71-060(E) below, shall be forwarded to the director of finance for deposit in the tree preservation account. Except as provided in this section, under no circumstances shall the funds collected by the director of finance for the tree preservation account be directed to any other account to be used for any other purposes other than for tree planting (including but not limited to tree support such as maintenance, installation of drip lines and drainage) and

preservation programs (including the creation of new woodland areas, underplantings as part of a tree planting program, and other planting activities that support the purposes of this chapter), public education programs regarding trees, and other activities in support of the administration of this chapter.

- (N) *Tree Protection Zone (TPZ)* means the area above and below grade around each tree where construction activities are limited or restricted to prevent injury to preserved trees.
- (1) The Tree Protection Zone shall extend at a minimum one and one half foot (1.5') from the base of the trunk for every one inch (1") of tree diameter.
  - (2) For areas with groups or groupings of trees, if the distance between trees is less than thirty feet (30'), the Tree Protection Zone may be combined and treated as one contiguous Tree Protection Zone to create a more clearly defined and manageable Tree Protection Zone.

#### **17-71-040 - Submittals.**

- (A) *Tree Preservation Plan.* Concurrent with the submission of Site Development Plans, Urban Renewal Site Plans, building permits or other projects in the development process, properties subject to this chapter 17-71 shall submit a tree preservation plan for approval by the City and County Landscape Architect, City and County Forester, or their designee. Applicants shall make all feasible attempts to accommodate existing trees within their design. The tree preservation plan shall be submitted and approved prior to any site activity or disturbances and shall include:
- (1) Identification of all existing trees four inches (4") DBH and larger on the site and within fifty feet (50') of the site boundaries and specifically note any significant trees.
  - (2) A chart specifying size, species, condition (as described in subsection B below - Condition Rating for Tree Preservation) and disposition for each existing tree.
  - (3) Mitigation actions as noted in B.M.C. 17-71-060 below, including identification of the trees that are proposed to comply with mitigation requirements, the location of removed trees, replacement trees, and the location of trees that are proposed for relocation.
  - (4) Proposed methods and schedule for implementing tree and other plant preservation measures as noted in B.M.C. 17-71-070 below.
  - (5) Proposed methods, materials, and schedule for root pruning, branch

pruning, and other tree maintenance as noted in B.M.C. 17-71-070 below.

- (6) A construction schedule which includes a time frame for work near existing plants and trees.
  - (7) A maintenance schedule for the preservation of the trees during construction.
  - (8) A watering plan and schedule that details watering of trees on the project site during construction including the following:
    - (i) Area of the project site to be watered and how watering will be phased based on construction.
    - (ii) Number of trees to be watered and total caliper inches. Identify the amount of water to be applied based on total caliper inches.
    - (iii) Schedule for watering during the duration of the project.
- (B) *Condition Rating for Tree Preservation.* The tree preservation plan submittals shall include an evaluation of tree health and structural issues consistent with the condition ratings in this section, with condition rating 1 being the highest rating, and condition rating 6 being the lowest rating of tree health and structure. Tree ratings shall be completed by a certified/registered arborist or forester, or a licensed landscape architect.
- (1) *Tree Rating Characteristics.*
    - (i) *Condition 1: Excellent* - The tree is typical of the species, has less than ten percent (10%) deadwood in the crown that is attributable to normal causes, has no other observed problems, and requires no remedial action.
    - (ii) *Condition 2: Good* - The tree is typical of the species and/or has less than twenty percent (20%) deadwood in the crown, only one or two (2) minor problems that are easily corrected with normal care.
    - (iii) *Condition 3: Fair* - The tree is typical of the species and/or has less than thirty percent (30%) deadwood in the crown, one or two (2) minor problems that are not eminently lethal to the tree, and no significant decay or structural problems, but the tree may need remedial care in order to minimize the impact of future stress and to ensure continued health.

- (iv) *Condition 4: Fair to Poor* - The tree is typical of the species but has some problems such as thirty percent (30%) to fifty percent (50%) deadwood in the crown, decay or structural defects, insects, disease or other problems that can be eminently lethal to the tree or create a hazardous tree if not corrected in a short period of time or if the tree is subjected to additional stress.
- (v) *Condition 5: Poor* - The tree is not typical of the species and/or has over fifty percent (50%) deadwood in the crown, major decay or structural problems, is hazardous or is severely involved with insects, disease, or other problems, that even if aggressively corrected, would not result in the long-term survival of the tree.
- (vi) *Condition 6: Dead* - Less than ten percent (10%) of the tree shows signs of life.

#### **17-71-050 - Tree Preservation Requirements - General.**

- (A) *Tree Preservation Requirements.* Properties required to comply with this chapter 17-71 must comply with the following:
  - (1) *Trees with Ratings of 1 through 4.* Trees identified in the tree preservation plan as having characteristic ratings of 1 through 4 must be preserved or mitigated as set forth in this chapter 17-71.
  - (2) *Trees with Ratings of 5 or 6 and Non-Desirable Trees.* Trees identified in the tree preservation plan as having characteristic ratings of 5 or 6 and non-desirable trees do not need to be mitigated or replaced.
  - (3) *Replacement Trees and Mitigation Measures.* The tree preservation plan required in Section 17-71-040(A) above shall show the mitigation actions that will equal the replacement of tree inches lost on site due to the construction activities as required by this chapter.
  - (4) *Interruption and Maintenance of Drainageways.* Drainage plans for individual sites shall not alter the supply of water to existing stands of trees if the longevity of those trees is dependent upon the flows. If the drainage of the site requires altering the existing supply of water, some alternative form through the use of irrigation shall be available from the time the existing watering source is eliminated.
    - (i) This requirement shall not preclude standard maintenance of drainageways necessary to ensure the free flow of stormwater. It will, however, protect those trees that do not interfere with the flow of storm drainage. Drainageways shall be maintained at the density of trees for which they were designed and future

drainageways shall be designed, as far as economically feasible, to consider preservation of mature stands of trees. If preservation is not possible, mitigation and/or replacement shall be accomplished, as outlined in B.M.C. 17-71-060.

- (5) *Compliance with Tree Preservation Plan.* At all times during construction the property owner, developer and their contractor(s) shall comply with the terms of the approved tree preservation plan and this chapter 17-71.
- (6) *Watering Log.* Upon completion of construction and/or prior to certificate of occupancy, a tree water log shall be submitted that provides the following information:
  - (i) Tree(s) watered, identified by the site identification number.
  - (ii) Number of gallons of water applied to each tree during every watering period.
  - (iii) Soil moisture level readings, on a scale of one to ten (1 - 10) throughout the Critical Root Zone for each tree.
  - (iv) Dates of each watering.

Projects on city and county-owned property where city and county maintained irrigation is available are exempted from watering log requirements of this section.

- (B) *Tree Preservation Plan Amendments.* The City and County Forester, the City and County Landscape Architect or their designee may amend any approved tree protection plan after receipt of an application for amendment from a property owner or authorized representative. The amendment shall be approved if staff determines that the proposed amendment complies with the requirements of this chapter 17-71.

#### **17-71-060 - Mitigation Requirements.**

- (A) *Replacement Trees.* No tree for proposed for replacement shall be less than two inches (2") or more than three inches (3") in caliper and shall be of no less quality species than the tree removed, as determined by the Tree Appraisal Guidelines published by the International Society of Arboriculture (ISA), as amended.

For example: Two nine inch (9") DBH trees are removed because of site constraints; the tree inches lost equals 18 inches. These inches can be replaced

by planting nine two inch (2") caliper trees or six three inch (3") caliper trees. Evergreen trees (i.e. Fir, Juniper, Pine and Spruce) are to be replaced with trees with the same level of quality by the ISA Guidelines, unless an equivalent substitute is approved by the City and County Landscape Architect.

(B) *Relocation On-Site.* If tree relocation within the site is attempted, it shall be performed by a professional forester or nursery operator. All measures shall be taken to ensure the life and good health of the tree(s).

(C) *Mitigation Off-Site.* If on-site tree replacement or relocation is not feasible, tree replacement or relocation shall take place through any or all of the following methods :

(1) Replacement of equal tree inch lost on another site within the City and County of Broomfield.

(2) Replacement of equal tree inch lost on public lands within the City and County of Broomfield.

(3) Relocation of trees to public lands within the City and County of Broomfield.

(4) If the mitigation measures in B.M.C. 17-71-060(1), (2), or (3) above are not feasible, payment of value of tree inches lost to the Tree Preservation Account described below is permitted as a mitigation measure.

(i) City and county owned properties and other government infrastructure projects (such as Colorado Department of Transportation or Mile High Flood District) are limited to on-site tree replacement or relocation of viable trees to public lands. If on-site tree replacement or relocation of trees to other public lands is not able to equal the replacement of tree inches lost due to site constraints, then the remaining required payment of tree inch value lost shall be waived.

(D) *Timing for Tree Mitigation Activities.*

(1) Tree preservation and/or mitigation may be accomplished at any time during the development process. However, the timing of these activities is especially critical when moving trees from one location to another. The City and County Landscape Architect, City and County Forester, or their designee, shall determine the conditions that will ensure the optimal success for tree relocation, preservation or mitigation and such conditions shall be detailed in the approved tree preservation plan.

- (2) When feasible, the decision on when to relocate trees will be made after all planning processes are complete. In cases where conditions necessitate the relocation of trees before all planning processes and approvals are complete, the applicant acknowledges that these activities do not guarantee project approval and that these activities are undertaken at the property owner's own risk.
- (E) *Payment in Lieu of Mitigation.* The property owner or their authorized representative shall pay a per tree payment in lieu of mitigation for each tree that is removed from the site during construction and not relocated or replaced. The payment in lieu of mitigation fee per tree is determined by the City and County Forester or their designee based on current market rates as set forth in the Fee Schedule found in the City and County of Broomfield Landscape Reference Manual and such fees may be adjusted annually based on market changes. Payment must be submitted prior to the construction permit issuance or other required permits.
- (F) *Standard Landscape Requirements.* Mitigation shall be in addition to standard landscape requirements established by the B.M.C. Trees planted to comply with standard landscape requirements may not be counted as satisfying tree mitigation requirements. In the case of tree removals, the location, species, and caliper of trees to be removed and their replacements shall be included on the landscape/site plan. In the case of tree relocations on site, the placement of the relocated trees shall be included on the landscape/site plan.
- (G) *Prohibited Plant Species.* Nothing in this chapter permits the planting of any prohibited plant species set forth in chapter 17-70, as amended, of the B.M.C.

**17-71-070 - Tree Protection Measures During Construction.**

- (A) *Protection of Existing Trees During the Construction Process.* Site construction shall take into account the life and good health of trees preserved on the site. The following procedures shall be followed for tree protection, unless alternate mitigation measures are approved in the tree preservation plan:
  - (1) Tree protection fencing shall be installed prior to any site activity and shall remain in place and be maintained in the condition in which they were installed for the duration of the construction activity. Protective fencing or barriers shall be set up to visibly show the tree protection zone. Chain link fencing six feet (6') high, with steel posts driven into the ground at not more than ten foot (10') intervals is required, but other barriers may be approved in the tree preservation plan based on site conditions.
  - (2) All equipment, including foot traffic shall remain outside of the tree protection zone.

- (3) If roots greater than one-inch (1") in diameter require removal, a clean cut shall be accomplished using a sharp hand tool. A maximum of two, three-inch (3") diameter roots per tree are permitted for removal. The removal of additional roots three-inches (3") or greater in diameter requires approval of the City and County Landscape Architect, City and County Forester, or their designee.
- (4) Limb removal shall be accomplished under the direction of a certified/registered arborist, forester or licensed landscape architect before construction begins.
- (5) Concrete washout areas shall be designated on the property, and such areas shall not flow into or across the tree protection zone.
- (6) No excavation is permitted within the tree protection zone. If excavation is required within the tree protection zone, the City and County Forester, the City and County Landscape Architect or their designee must be notified prior to start of excavation activities.
- (7) No branches or bark are to be damaged within the tree protection zone. If it appears any work may cause damage to the branches of a tree, the property owner or their contractor shall contact the City and County Forester or the City and County Landscape Architect, or their designee for a determination as to whether such damage is likely and pruning is necessary.
- (8) No stockpiling of soil, materials, or supplies of any kind are permitted within the tree protection zone.
- (9) No vehicle parking is permitted within the tree protection zone.
- (10) The soil shall not be compacted within the tree protection zone.

**17-71-080 - Injuries to Existing Trees During or Due to Construction - Damage Fines.**

- (A) *Injuries to Existing Trees - Repairs and Mitigation.* Existing trees damaged through the construction process shall be immediately repaired and if damaged beyond repair, replaced per the mitigation specifications in B.M.C. 17-71-060 and a damages fine as set forth in this section will be applied. The restoration of damaged trees shall follow the approved measures set forth in the tree preservation plan and this chapter 17-71.
- (B) *Damages.* Any trees designated as requiring retention or protection that are partially injured or lost due to construction activities on-site will result in a fine as determined by the City and County Landscape Architect, City and County Forester, or their designee, as described in this B.M.C. 17-71-080.



- (1) *Tree Appraisal.* All trees that are damaged during construction will be evaluated and appraised by the City and County Landscape Architect, the City and County Forester, or their designee in order to set the damages fine. Documentation for appraisals will consist of:
  - (i) Measurement of plant size.
  - (ii) Identification by common and botanical names.
  - (iii) Current condition (overall health, injuries, overt hazard status, etc.).
  - (iv) Location factors as described in the most current edition of "Guide for Plant Appraisal." Photographs may be taken of certain trees and shrubs to document debilitating condition factors.

The full value of the tree will be used in calculations to determine damage fines or proportionate reductions for partial injuries, as applicable.

- (C) *Notice of Damages Fine.* The City and County Landscape Architect, the City and County Forester, or their designee shall notify the property owner and any authorized representatives listed on the application of the total damages fine incurred for violations of this chapter, and if such persons fail within ninety (90) days after the date of notification to pay the damage fine including any appeals as described below, then such damage fine may become a lien against and running with the property as set forth in B.M.C. 17-71-080(E). The damages fines described in this section are independent of any applicable penalty for violations of this chapter as provided below and are intended to address damages for injuries to trees during construction only. Assessed damages fines shall be placed in the Tree Preservation Account and used accordingly.
- (D) *Appeals.* Upon receipt of a notice of damages fine issued pursuant to this section, the property owner or their authorized representative may appeal to decisions to City and County Manager by filing a written notice of appeal within thirty days of the date of the notice of damages fine. The request for a hearing on appeal shall set forth the reasons for and the amount of the requested changes in fine amount. The City and County Manager, or a designee thereof, shall conduct an informal administrative hearing and make a final determination on the damages fine assessment. The City and County Manager, or a designee, shall notify the property owner and their authorized representative in writing of the time and place for the hearing on appeal. The decision of the city and county manager, or their designee, shall be final.
- (E) *Liens.* A failure by the property owner to pay the damage fines or other sums

due under this chapter constitutes a debt due and owing the city and county. In the event any sums due to the city and county remain unpaid for more than ninety days, the director of finance in conjunction with the City and County Landscape Architect, City and County Forester, or their designee shall certify such amounts to the county treasurer for collection in the same manner as general property taxes are collected in accordance with applicable law. The amount certified by the director of finance to the county treasurer for collection shall include any charges of the county treasurer for such collection. In addition, the city and county has the right to recover the amounts due and payable as provided by law in any court of competent jurisdiction.

**17-71-090 - Authority and Penalties.**

- (A) *Authority.* All plantings, preservation and mitigation measures described herein shall be subject to inspection by Broomfield. The city and county shall have the authority to enforce provisions of this chapter and to impose fines for violations of this chapter. These tree preservation regulations are enforced by the city and county, and nothing in the tree preservation code is intended to create a private cause of action.
  
- (B) *Penalty For Violations.* Any person found in violation of any provision of this chapter shall be subject to a civil penalty per violation, per day. Each violation may be fined up to the fine amount permitted in chapter 1-12 of the B.M.C. to be assessed and collected through a summons into Broomfield Municipal Court.

**Section 2.**

This ordinance shall be effective January 1, 2025.

Introduced and approved after first reading on November 12, 2024, and ordered published in full.

Introduced a second time and approved on December 10, 2024, and ordered published.

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:

KKH

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City and County Attorney



# City and County of Broomfield

## City Council Regular Meeting

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### J. Proposed Resolution Ratifying Broomfield's Election to Participate in Group Financing on Windy Gap Completion Costs

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6J.
Presented By	
Graham Clark, Director of Finance	
Community Goals	

## Overview

[View Correspondence](#)

Proposed Resolution 2024-142 , if approved, will ratify the Director of Finance’s written election to participate in the WGFP group financing and authorize the Mayor or Mayor-Pro-Tem to sign any documents which may be required to effectuate the City’s participation, in a form approved by the City and County Attorney.

### **Attachments**

[Memo - Ratifying Participation in Group Financing for Windy Gap Firming Project Completion Costs.pdf](#)

[Resolution No. 2024-142 Ratifying Participation in Group Financing for Windy Gap Firming Project Completion Costs .pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

Broomfield has two major water supply sources: treated water purchased from the Denver Water Board and the raw water from both the Colorado-Big Thompson and Windy Gap Projects. The City and 11 other participating entities have been working with the Municipal Subdistrict of the Northern Colorado Water Conservancy District (“Northern Water”) since 2000 to permit, design and construct Chimney Hollow Reservoir dedicated for firming Windy Gap water.

On October 13, 2020, the City Council approved an Allotment Contract between the Windy Gap Firming Project Water Activity Enterprise (WGFP), Northern Water and the City and County of Broomfield (City) securing Broomfield’s participation in the financing and construction of Chimney Hollow Reservoir by the WGFP. Pursuant to the Allotment Contract, the City will own 29.4% of the WGFP storage capacity in Chimney Hollow Reservoir, and therefore is responsible for 29.4% of the costs.

The total construction costs for the WGFP were estimated in 2020 to be \$600 million and the City’s pro-rata share totaled \$176.4 million. Under the Allotment Contract, the City would contribute a cash payment of \$22 million and finance \$154.4 million toward Initial Costs and Expenses (Initial C&E). On August 10, 2021, the City Council passed Ordinance No. 2157 authorizing the issuance of bonds by Broomfield’s Water Activity Enterprise to finance the City’s \$154.5 million share of the WGFP costs.

In May 2024, the City was notified by Northern Water that costs to complete the WGFP had increased by \$65 million and that the City’s pro-rata share of the increase was \$18.9 million. Section 6.2 of the Allotment Contract requires the City to pay a pro-rata share of the WGFP project’s overall costs and expenses, including both Initial C&E and Completion Costs and Expenses (Completion C&E). Broomfield’s initial payment of \$176.4 million was for Initial C&E. The additional request for \$18.9 million by Northern Water is for Completion C&E.

Section 6.2.2 of the Allotment Contract required the City to elect in writing within 90 days of receipt of the notice from Northern Water if the City wanted to participate in the WGFP group financing to pay the Completion C&E or if the City wished to fund such costs via cash payment. Pursuant to the Allotment Contract, the City’s Director of Finance informed Northern Water on August 26, 2024 in writing of the City’s notice of intent to participate in the WGFP group financing to pay the Completion C&E of \$18.9 million. Payments under the WGFP group financing are not expected to begin until 2026.

Any obligation of the City to pay Completion C&E under the group financing constitute special obligations of the City payable solely from revenues and other moneys derived from the Water Enterprise and are treated as expenses of operating the Water Enterprise. The obligations do not constitute a general obligation or indebtedness of the City. As such, this ratification may be approved by resolution as the obligations do not trigger the City’s Charter provisions concerning the need to approve any indebtedness by ordinance.

Proposed Resolution 2024-142 ratifies the Director of Finance’s written election to participate in the WGFP group financing and authorize the Mayor or Mayor-Pro-Tem to sign any documents which may be required to

effectuate the City’s participation, provided said documents are first approved by the City and County Attorney.

## Financial Considerations

None in 2025. Payments for the Completion C&E under the WGFP group financing will begin in 2026. Broomfield has already committed to paying its pro-rata share for the total costs to complete the WGFP and Chimney Hollow Reservoir when it approved the Allotment Contract in 2020. Adequate funds will be programmed into all future year budgets to satisfy this obligation and are subject to annual appropriation by the City Council. All funds will originate from within the Water Enterprise.

## Prior Council or Other Entity Actions

[Resolution No. 2020-232](#) approved by the City Council on October 13, 2020 approved an Allotment Contract concerning the City’s participation in and financing of the WGFP project.

[Ordinance No. 2157](#) approved on August 10, 2021 authorized the issuance of bonds by Broomfield’s Water Activity Enterprise to finance the City’s share of Initial C&E for the WGFP project.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

To ratify the Director of Finance’s written notice of election to participate in the WGFP group financing and authorize the Mayor or Mayor-Pro-Tem to sign any documents which may be required to effectuate the City’s participation, the appropriate motion is...

**That Resolution 2024-142 be adopted.**

## Alternatives

Not ratify the Director’s election to participate in the WGFP group financing and direct the City Manager to notify Northern Water that Broomfield will be funding its pro-rata share of the Completion C&E by other means.

# RESOLUTION NO. 2024-142

A resolution ratifying the election by the City and County of Broomfield to participate in the group financing for Windy Gap Firming Project completion costs

## Recitals.

Whereas, Broomfield and 11 other participating entities have been working with the Municipal Subdistrict of the Northern Colorado Water Conservancy District (“Northern Water”) since 2000 to permit, design and construct Chimney Hollow Reservoir dedicated for firming Windy Gap water.

Whereas, Broomfield has two major water supply sources: treated water purchased from the Denver Water Board and the raw water from both the Colorado-Big Thompson and Windy Gap Projects.

Whereas, the City Council approved an Allotment Contract between the Windy Gap Firming Project Water Activity Enterprise (WGFP), Northern Water and the City and County of Broomfield (City) on October 13, 2020 securing Broomfield’s participation in the financing and construction of Chimney Hollow Reservoir by the WGFP.

Whereas, pursuant to the Allotment Contract, the City will own 29.4% of the WGFP storage capacity in Chimney Hollow Reservoir, and therefore is responsible for 29.4% of the costs.

Whereas, total construction costs for the WGFP were estimated in 2020 to be \$600 million and the City’s pro-rata share totaled \$176.4 million. Pursuant to the Allotment Contract, the City would contribute a cash payment of \$22 million and finance \$154.4 million toward Initial C&E costs.

Whereas, on August 10, 2021, the City Council passed Ordinance No. 2157 authorizing the issuance of bonds by Broomfield’s Water Activity Enterprise to finance the City’s \$154.5 million share of the WGFP costs.

Whereas, in May 2024, the City was notified by Northern Water that costs to complete the WGFP had increased by \$65 million and that the City’s pro-rata share of the increase was \$18.9 million.

Whereas, Section 6.2 of the Allotment Contract requires the City to pay a pro-rata share of the WGFP project’s overall costs and expenses, including both Initial C&E costs and Completion C&E costs. Broomfield’s initial payment of \$176.4 million was for Initial C&E costs. The additional request for \$18.9 million by Northern Water is for Completion C&E costs.

Whereas, Section 6.2.2 of the Allotment Contract required the City to elect in writing within 90 days of receipt of the notice from Northern Water if the City wanted participate in the WGFP group financing to pay the Completion C&E costs or if the City wished to fund such costs via cash payment.

Whereas, pursuant to the Allotment Contract, the City's Director of Finance informed Northern Water on August 26, 2024 in writing of the City's intent to participate in the WGFP group financing to pay the Completion C&E costs of \$18.9 million.

Whereas the City Council now seeks to ratify the election by the Director of Finance to participate in the WGFP group financing.

Now, therefore, be it resolved by the City Council of the City and County of Broomfield, Colorado:

### **Section 1. Ratification of the City's Election to Participate in WGFP Group Financing.**

The City Council hereby ratifies the Director of Finance's written election dated August 26, 2024, and provided to Northern Water, of the City's intent to participate in the WGFP group financing to pay for the City's pro-rata share of Completion C&E costs of \$18.9 million.

### **Section 2. Authorizations.**

The Mayor or Mayor-Pro-Tem is authorized to sign any documents which may be required by the WGFP or Northern Water to effectuate the City's participation, provided said documents are first approved by the City and County Attorney.

### **Section 3. Effective Date.**

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

Approved on November 12, 2024

Broomfield Urban Renewal Authority

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Mayor

Attest:

---

Office of the City and County Clerk



Approved as to form:

*NCR*

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City and County Attorney



**K. Proposed BURA Resolution Approving a Remarketing Agreement Concerning BURA Bonds**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Consent Items Item: 6K.
Presented By	
Jeff Romine, Economist & Director	
Community Goals	

## Overview

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution 2024-155-UR, if approved, will ratify the selection of Stifel, Nicolus, and Co., Inc. pursuant to the RFP and appoint Stifel as the remarketing agent for the 2005 Bonds.

### **Attachments**

[Memo - BURA Event Center Bonds Remarketing Agreement 2024.pdf](#)

[Resolution No. 2024-155-UR Remarketing Agreement Concerning BURA Bonds.pdf](#)

[Remarketing Agreement - BURA FINAL11-12-2024.pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

In May 2023, the Broomfield Urban Renewal Authority (“BURA”) made the decision for the redevelopment and activation of the former event center property (11450 and 11492 Broomfield Ln, Broomfield, CO), by taking initial step for a closure and demolition of the Broomfield Event Center (previously the 1STBANK Center) by authorizing the termination of the operator agreement with Peak Entertainment, LLC. The Event Center was officially closed to the public in December 2023.

On September 24, 2024, BURA approved a demolition contract with Colorado Cleanup Corporation for the demolition of the former Broomfield Event Center. That same night BURA approved a loan agreement with the City and County of Broomfield for up to \$4 million to fund the demolition. Pre-demolition activities are currently underway and demolition is anticipated to begin in mid November 2024.

As directed, staff is working to modify the 2005 bonds that were issued to construct the Broomfield Event Center to convert the bonds from a variable interest rate to a fixed interest rate. This effort is necessary as the original bonds are subject to an annual letter of credit and the bank that issues the letter of credit has advised BURA that they will not be renewing the letter of credit as of March 1, 2025. The current outstanding principal balance of the 2005 bonds is approximately \$31.23 million dollars with annual debt service of approximately \$4.73 million dollars. The bonds are scheduled to be paid in full in 2030.

The restructuring of the 2005 bonds is a multi-step process. To assist with this effort, staff has engaged the services of Butler Snow as bond counsel and RBC Capital Markets (“RBC”) as financial advisor. Additionally, on August 23, 2024 BURA issued a request for proposal (RFP) seeking underwriting services for the restructuring of the 2005 bonds (Solicitation Number 24-RDQ-BURA-001). Five (5) firms responded to the RFP and Stifel Nicolaus & Company (“Stifel”) was determined to be the best fit to assist BURA with the restructuring.

The first step of the refinancing process is ratifying the selection of Stifel as the underwriter for the bond refinancing and removing RBC as the remarketing agent of the current bonds and appointing Stifel into that role. Since RBC is acting as a financial advisor on the bond refinancing, RBC can not also serve as remarketing agent.

The next step will be requesting BURA’s approval of a refunding and refinancing of the original 2005 bonds (which currently are set to be fully paid by December 2030). A new Series 2025 bonds would be issued paying off the original bonds. This proposed action provides BURA desired benefits by: (1) converting the debt from a variable rate to a fixed rate; and (2) allowing the flexibility to sell the former Event Center site while the bonds remain outstanding. The issuance cost for the refinancing is approximately \$500,000. These issuance costs are included into the amount being refinanced, and will result in achieving an overall net savings. Additionally, the refunding and refinancing will not change the timing of the debt term - with scheduled pay off remaining no later than December 2030.

It is important to note, due to the expiring letter of credit, a restructuring of the 2005 bonds are required. BURA does not have an option to remain in the status quo under the current 2005 bonds.

Staff will be presenting the restructured bonds for BURA’s consideration in early 2025.

Proposed Resolution 2024-155-UR, if approved, will ratify the selection of Stifel pursuant to the RFP and appoint Stifel as the remarketing agent for the 2005 Bonds.

## Financial Considerations

There are no financial considerations for the proposed resolution. Staff will present to BURA the restructured bonds in early 2025, including the costs of issuance.

## Prior Council or Other Entity Actions

[September 13, 2005](#) - Resolution No. 2005-126-UR authorized the issuance of BURA Tax Increment Revenue Bonds to finance the construction of the Broomfield Event Center.

[May 23, 2023](#) - BURA authorized the termination of the Management and Operations Agreement for the Event Center effective as of November 30, 2023.

[December 5, 2023](#) - BURA directed its Executive Director to pursue the solicitation of a contract for the demolition of the Event Center.

April 30, 2024 - [Ordinance No. 2231](#) and [Resolution No. 2024-53-UR](#) authorized certain agreements related to Arista Parking Garage Bonds (2024).

[September 24, 2024](#) - BURA amended the 2024 budget and authorized a loan agreement and demolition contract related to the demolition of the Event Center.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If BURA desires to proceed with the appointment of Stifel as the Remarketing Agent, the appropriate motion is...

**That Resolution 2024-155-UR be adopted.**

## Alternatives

Not appoint Stifel as the remarketing agent and direct staff to seek alternative representation for either the financial advisor role or remarketing agent role. RBC as the current remarketing agent cannot serve as both financial advisor and remarketing agent.

# RESOLUTION NO. 2024-155-UR

A resolution authorizing the replacement of the Remarketing Agent and approving an updated Remarketing Agreement related to the Broomfield Urban Renewal Authority, Tax Increment Bonds (Broomfield Event Center Project), Series 2005

## Recitals.

Whereas, the Broomfield Urban Renewal Authority (“BURA”) is a public body corporate and politic duly established by the City of Broomfield (the “City”) on December 9, 1986, under and pursuant to the Colorado Constitution and the laws of the State of Colorado.

Whereas, BURA is authorized to transact business and exercise its powers as an urban renewal authority under and pursuant to the Colorado Urban Renewal Law, as adopted in Part 1 of Article 25, of Title 31, C.R.S. (the “URA Act”).

Whereas, the City previously approved and adopted an Urban Renewal Plan for Wadsworth Interchange Urban Renewal Project (the “Plan”) as an urban renewal plan under the URA Act.

Whereas, the Plan included the construction of the Broomfield Event Center (the “Project”).

Whereas, pursuant to the URA Act and the Plan, BURA previously issued its “Broomfield Urban Renewal Authority, Tax Increment Revenue Bonds (Broomfield Event Center Project), Series 2005, in the aggregate principal amount of \$59,785,000 and currently outstanding in the aggregate principal amount of \$31,235,000 (the “Bonds”).

Whereas, the Bonds were issued pursuant to the terms of an Indenture of Trust between BURA and American National Bank (now known as UMB Bank, n.a.) as trustee, dated as of October 1, 2005 (the “Indenture”).

Whereas, the Bonds were issued as variable rate bonds which were secured by a direct pay letter of credit (the “Letter of Credit”) issued by BNP Paribas (the “Bank”).

Whereas, the Bonds are remarketed on a weekly basis pursuant to the terms of a remarketing agreement between BURA and RBC Capital Markets (“RBC”) as the initial Remarketing Agent (“Remarketing Agent”).

Whereas, the current letter of credit expires on March 1, 2025.

Whereas, BURA is exploring options to convert the Bonds to a fixed rate, which would alleviate the need for a Letter of Credit.

Whereas, BURA desires to retain RBC to act as financial advisor for BURA relating to the conversion and/or refunding of the Bonds.

Whereas, BURA submitted a request for proposals for a replacement Remarketing Agent, and has selected Stifel Nicolaus & Company, Inc., (“Stifel”) to serve as a successor Remarketing Agent.

Whereas, under Section 9.07 of the Indenture, the remarketing agent may be removed at any time, at the direction of BURA, by an instrument filed with the Remarketing Agent and the paying agent, with consent of the Bank.

Whereas, the Board of Commissioners of BURA has determined that it is in the best interest of the Authority to remove RBC as Remarketing Agent, and to replace RBC with Stifel, as successor Remarketing Agent.

Whereas, Stifel meets the qualifications and requirements to act as Remarketing Agent under the terms of the Indenture.

Whereas, the Bank has consented to the replacement of RBC with Stifel as Remarketing Agent.

Whereas, there is on file with BURA the proposed form of Remarketing Agreement with Stifel, as successor Remarketing Agent.

Now, therefore, be it resolved by the Broomfield Urban Renewal Authority:

### **Section 1. Ratification of Award for Underwriting Services.**

The Board hereby ratifies the Executive Director’s award to Stifel pursuant to BURA’s request for proposal for underwriting services.

### **Section 2. Removal and Replacement of Remarketing Agent.**

The Board hereby determines to remove RBC as Remarketing Agent for the Bonds and approves Stifel as the successor Remarketing Agent. Stifel meets the requirements for Remarketing Agent as required by the Indenture.

**Section 3. Approval of Remarketing Agreement.**

The Remarketing Agreement with Stifel is hereby approved. Changes or amendments to the Remarketing Agreement are authorized as may be approved by bond counsel provided the changes are not substantially inconsistent with the overall intent of the Agreement.

**Section 4. Authorizations.**

The Chair or Vice Chair is authorized to sign and the Secretary to attest the Remarketing Agreement, and any changes or amendments thereto, in a form approved by the City and County Attorney.

**Section 5. Effective Date.**

This Resolution is effective upon its approval by the Authority.

Approved on November 12, 2024

Broomfield Urban Renewal Authority

\_\_\_\_\_  
Chair

Attest:

\_\_\_\_\_  
Secretary

Approved as to form:

*NCR*

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

## REMARKETING AGREEMENT

\$59,785,000

Broomfield Urban Renewal Authority  
Tax Increment Revenue Bonds  
(Broomfield Event Center Project)  
Series 2005, dated October 26, 2005

This Remarketing Agreement, dated as of **November 18**, 2024 (this "Agreement"), is by and between **Broomfield Urban Renewal Authority**, a public body corporate and politic duly established by the City of Broomfield, Colorado (the "City") on December 9, 1986 under and pursuant to the Colorado Constitution and the laws of the State of Colorado (the "State") and Resolution No. 155-86 adopted by the City Council of the City on December 9, 1986 (the "Issuer"), and **Stifel, Nicolaus & Company, Incorporated** (the "Remarketing Agent") upon its appointment as successor Remarketing Agent on **November 18**, 2024 (the "Effective Date") and is executed and delivered on the Effective Date in connection with the above-captioned bonds (the "Bonds").

### RECITALS:

1. The Issuer issued the Bonds pursuant to that certain Indenture of Trust, dated as of October 1, 2005, by and between the Issuer and American National Bank, as trustee (the "Trustee") for the purposes of (i) acquiring, constructing, and equipping a 6,000-seat event center, (ii) funding a reserve fund and a capitalized interest fund, and (iii) paying the costs of issuing the Bonds.

2. Payments of principal and purchase price of and interest on the Bonds while in the Weekly Mode or Monthly Mode have been and will be payable by amounts drawn under the Letter of Credit issued by BNP Paribas, San Francisco Branch (the "Bank").

3. The Bonds and the Indenture provide, among other things, that the owners of the Bonds (the "Owners") may elect (or may be required) in certain instances to tender their Bonds for purchase upon the terms and conditions contained in the Bonds and the Indenture.

4. Pursuant to Section 9.07 of the Indenture, the Issuer filed (i) a notice of removal with the Trustee and the original remarketing agent, (ii) appointed the Remarketing Agent, as successor Remarketing Agent with the Bank's consent, and (ii) the required certificate of successor Remarketing Agent with the Trustee.

5. The Remarketing Agent has agreed to discharge the duties and responsibilities of successor remarketing agent for the Bonds under the Indenture and this Agreement, including the use of its best efforts to remarket any Bonds tendered or deemed tendered by the Owners for purchase if they are to be remarketed and meet the conditions for remarketing.

NOW, THEREFORE, for and in consideration of the mutual covenants made herein and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

**Section 1. Definitions.** Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Indenture.



## **Section 2. Appointment of Remarketing Agent.**

(a) Subject to the terms and conditions contained herein, the Issuer hereby appoints the Remarketing Agent to serve as successor remarketing agent for the Bonds, and the Remarketing Agent hereby accepts its appointment as successor remarketing agent for the Bonds. This Agreement shall constitute the Remarketing Agreement referred to in the Indenture. The terms and conditions of the Indenture relating to the duties and obligations of the Remarketing Agent are incorporated herein by reference.

(b) Notwithstanding the foregoing or any other provisions of this Agreement or the Indenture, the use of the term “agent” with reference to the Remarketing Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom and is intended to create or reflect only an independent contractor relationship between contracting parties and the Remarketing Agent acts as an independent broker-dealer and exercises its own independent judgment in connection with its rights and duties as Remarketing Agent.

(c) The Borrower acknowledges and agrees that: (i) the transaction contemplated by this Agreement is an arm’s length, commercial transaction between the Issuer and the Remarketing Agent in which the Remarketing Agent is not acting as a municipal advisor, financial advisor or fiduciary to the Borrower; (ii) the Remarketing Agent has not assumed any advisory or fiduciary responsibility to the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Remarketing Agent has provided other services or is currently providing other services to the Issuer on other matters); (iii) the only obligations the Remarketing Agent has to the Issuer with respect to the transaction contemplated hereby expressly are set forth in this Agreement; and (iv) the Issuer has consulted its own legal, accounting, tax, financial and other advisors, as applicable, to the extent it has deemed appropriate

## **Section 3. Responsibilities of Remarketing Agent.**

(a) **General.** Subject to the terms and conditions set forth in this Agreement, the Remarketing Agent agrees to perform all duties and obligations of the Remarketing Agent under the Indenture.

### **(b) Remarketing of Tendered Bonds.**

(i) **General.** The Remarketing Agent shall use its best efforts to remarket Bonds to be purchased as described in the Indenture. It shall be a condition of the Remarketing Agent’s obligations hereunder that there does not exist an Event of Default under Article VIII of the Indenture. The obligations of the Remarketing Agent under this Agreement have been undertaken in reliance on, and shall be subject to, the due performance by the Issuer of its obligations and agreements to be performed hereunder and to the accuracy of and compliance with the representations, warranties and agreements of the Issuer contained or incorporated by reference herein, on and as of the Effective Date of this Agreement and on and as of each date on which Bonds are to be remarketed pursuant to this Agreement. The obligations of the Remarketing Agent hereunder with respect to each date on which Bonds are to be remarketed pursuant to this Agreement are also subject, in the discretion of the Remarketing Agent, to the following further conditions: (i) the Bonds, a Letter of Credit, and the Indenture shall be in full force and effect and shall not have been amended, modified or supplemented in any way which, in the sole judgment of the Remarketing Agent, would materially and adversely affect the Bonds (ii) no Event of Default and no event which, with the passage of time or the giving of notice or both, would constitute an Event of Default, under the Indenture shall have occurred and be continuing, (iii) there shall be in

full force and effect such additional resolutions, agreements, certificates (including such certificates as may be required by regulations of the Internal Revenue Service in order to establish the exclusion from gross income of interest on the Bonds for federal income tax purposes) and opinions which are reasonably required by Bond Counsel and the Remarketing Agent and which shall be reasonably satisfactory in form and substance to Bond Counsel and the Remarketing Agent, and (iv) there shall have been no material adverse change in the condition (financial or otherwise) of the Issuer since the date of the Offering Materials. The term "Offering Materials" shall mean (i) initially, the final Official Statement, dated October 24, 2005, relating to the Bonds, together with any supplement, update or amendment thereto, and (ii) upon the preparation and dissemination thereof, any reoffering circular, remarketing memorandum or similar document pursuant to which the Bonds are offered in any remarketing of the Bonds, together with any supplement, update or amendment thereto.

(ii) *Immediate Suspension.* The Remarketing Agent may suspend its remarketing efforts under this Agreement immediately, after written notice to the Issuer, the Bank, and the Trustee, upon the occurrence of any of the following, which suspension may continue as long as any of the following continues to exist:

- (A) any of the representations or warranties of the Issuer made in Section 9 hereof shall not have been true and correct on the date made, or the Issuer shall fail to observe any of the covenants or agreements made in Section 5 hereof; or
- (B) any event shall occur or information shall become known which, in the reasonable professional judgment of the Remarketing Agent after consultation with the Issuer, makes untrue, incorrect or misleading in any material respect any statement or information contained in the Offering Materials provided to the Remarketing Agent in connection with the performance of its duties hereunder, whether provided pursuant to Section 5 hereof or otherwise, or causes such Offering Materials to contain an untrue statement of a material fact or to omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading and such statement or omission cannot be corrected through a supplement to the Remarketing Documents; or
- (C) legislation shall be favorably reported by a committee of the House of Representatives or the Senate of the Congress of the United States of America (the "United States") or be introduced by committee, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate, or be recommended by the President of the United States or by committee of the House of Representatives or the Senate to the Congress of the United States for passage by the Congress of the United States, or a decision by a court established under Article III of the Constitution of the United States or the United States Tax Court shall be rendered or a ruling, regulation or official statement by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or other governmental agency shall be made or proposed having the purpose or effect of imposing federal income taxation, or any other event shall have occurred which results in the imposition of federal income taxation, upon revenues or other income of the general character to be derived by the Issuer (or by any similar bodies) or causing interest received on the Bonds not to be excluded from gross income for purposes of federal income taxation; or

(D) legislation shall be favorably reported by a committee of the House of Representatives or the Senate of the Congress of the United States or be introduced by committee, by amendment or otherwise, in, or be enacted by, the House of Representatives or the Senate, or be recommended by the President of the United States or by committee of the House of Representatives or the Senate to the Congress of the United States for passage by the Congress of the United States, or a decision by a court of the United States shall be rendered, or stop order, ruling, regulation or official statement by, or on behalf of, the United States Securities and Exchange Commission or other governmental agency having jurisdiction of the subject matter shall be made or proposed, to the effect that the offering or sale of obligations of the general character of the Bonds is or would be in violation of any provision of the Securities Act of 1933, as amended (the “*Securities Act*”) and as then in effect, or the Securities Exchange Act of 1934, as amended and as then in effect, or that the Indenture shall be required to be qualified under the Trust Indenture Act of 1939, as amended and as then in effect (the “*1939 Act*”), or with the purpose or effect of otherwise prohibiting the offering or sale of obligations of the general character of the Bonds, or the Bonds, as contemplated hereby, without registration under the Securities Act or qualification of the 1939 Act, as amended.

(iii) *Suspension for Market Failure.* The Remarketing Agent may suspend its remarketing efforts hereunder immediately, after written notice as provided in (ii) above, upon the occurrence of any of the following events, which suspension may continue so long as any such event continues to exist, but only if and to the extent, in the reasonable professional judgment of the Remarketing Agent after consultation with the Issuer, the occurrence and continuation of such event shall cause the Bonds not to be remarketable:

(A) *National Hostility.* A war involving the United States shall have been declared, or any existing conflict involving the armed forces of the United States shall have escalated, or any other national emergency, calamity or crisis relating to the effective operation of government or the financial community shall have occurred or escalated, which, in the Remarketing Agent’s reasonable opinion, materially adversely affects the market price or marketability of the Bonds or the ability of the Remarketing Agent to enforce contracts for the sale of the Bonds; or

(B) *Trading Impediments.* There shall have occurred a general suspension of trading on the New York Stock Exchange or the American Stock Exchange or other national securities exchange; or material restrictions are established upon trading of securities, including limited or minimum prices, by any governmental authority or by any national securities exchange; or a banking moratorium is declared by federal or state authorities; or

(C) *Governmental Regulation.* Any governmental authority shall impose, as to the Bonds, or obligations of the general character of the Bonds, any material restrictions not now in force, or increase materially those now in force; or

(D) *Ratings.* Any rating assigned to the Bonds by a national rating service, including Moody’s, S&P or Fitch, is downgraded, withdrawn or suspended (or is the subject of an official notice as to a possible downgrade such as being

placed on “credit watch” or “negative outlook”), which, in the Remarketing Agent’s reasonable opinion, materially adversely affects the market price or marketability of the Bonds or the ability of the Remarketing Agent to enforce contracts for the sale of the Bonds; or

- (E) Any event, including without limitation, the bankruptcy or default of any issuer of, or obligor on, tax-exempt securities shall have occurred which in the Remarketing Agent’s reasonable opinion makes the marketing of securities of the general character of the Bonds impossible over an extended period of time; or
- (F) Any litigation shall be instituted, pending or threatened to restrain or enjoin the sale or remarketing of the Bonds or in any way protesting or affecting any authority for or the validity of the Bonds, the Indenture, the Letter of Credit or this Agreement, or the existence or powers of the Issuer or the Bank; or
- (G) There is any material adverse change in the affairs of the Issuer, which in the sole judgment of the Remarketing Agent, makes it impractical or inadvisable to proceed with the remarketing of the Bonds as contemplated by this Agreement, the Indenture and the Offering Materials, as then amended in accordance with Section 4; or
- (H) Except as provided in clauses (C) and (D) of Section 3(b)(ii), any legislation, resolution, ordinance, rule or regulation shall be introduced in, or be enacted by, any federal governmental body, department or agency of the United States or the State, or a decision by any court of competent jurisdiction within the United States or the State shall be rendered, which, in the Remarketing Agent’s reasonable opinion, materially adversely affects the market price or marketability of the Bonds or the ability of the Remarketing Agent to enforce contracts for the sale of the Bonds.

#### **Section 4. Resignation and Removal of Remarketing Agent.**

(a) The Remarketing Agent may at any time resign and be discharged of its duties and obligations hereunder upon compliance with the provisions of the Indenture. The Indenture does not require the appointment and acceptance of a successor remarketing agent prior to resignation of the Remarketing Agent. The Remarketing Agent may at any time resign and be discharged of its duties and obligations hereunder without appointment and acceptance of a successor if the Letter of Credit is not renewed or replaced pursuant to terms of this Agreement and the Indenture; the Issuer is in default under the Indenture or Reimbursement Agreement; the Issuer refuses to comply with Section 5 of this Agreement; or the Issuer is otherwise in default under this Agreement.

(b) In the event of the resignation or removal of the Remarketing Agent, the Remarketing Agent shall pay over, assign, and deliver any moneys held by it in such capacity to its successor, if applicable, or to the Trustee, in the absence of a successor.

#### **Section 5. Disclosure Materials.**

(a) **General.** If the Remarketing Agent determines that it is necessary or desirable to amend or supplement Offering Materials or use a new disclosure document in connection with its remarketing of the Bonds, the Remarketing Agent will notify the Issuer, and the Issuer will use reasonable commercial

efforts to provide the Remarketing Agent with an amendment or supplement to the Offering Materials or other disclosure document (the Offering Material, as it may be supplemented or amended, or such other disc document constituting the “*Remarketing Materials*”) in respect of the Bonds reasonably satisfactory to the Remarketing Agent and its counsel. The Issuer hereby authorizes the Remarketing Agent to use such Remarketing Materials and the information contained therein in connection with the remarketing of the Bonds. The Issuer will supply the Remarketing Agent with such number of copies of the Remarketing Materials as the Remarketing Agent requests from time to time and the Issuer will amend the document (and all documents incorporated by reference) so that at all times the Remarketing Materials will not, to the knowledge of the Issuer, contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. In connection with the use of any Remarketing Materials by the Remarketing Agent in its remarketing of the Bonds, the Issuer will use reasonable commercial efforts to furnish to the Remarketing Agent such certificates, accountants’ letters, and opinions of counsel as the Remarketing Agent reasonably requests and as the Indenture requires. In addition, at the Issuer’s expense, the Issuer will take all steps reasonably requested by the Remarketing Agent that the Remarketing Agent or its counsel may consider necessary or desirable to establish a “due diligence” defense to any action commenced against the Remarketing Agent in respect of any disclosure document.

(b) ***Compliance With Rule 15c2-12.*** Currently, the Bonds are not subject to Rule 15c2-12, however, in the event the Remarketing Agent is asked to remarket the Bonds in any situation that requires, by the terms of Rule 15c2-12 (“*Rule 15c2-12*”) promulgated under the Securities Exchange Act of 1934, as amended (the “1934 Act”), compliance with Rule 15c2-12:

(i) the Issuer will provide the Remarketing Agent with Remarketing Materials that the Issuer deems final as of its date (exclusive of pricing and other sales information permitted to be omitted by Rule 15c2-12) prior to the date the Remarketing Agent bids for, offers or sells any Bonds;

(ii) the Issuer will provide the Remarketing Agent with such number of copies of any Remarketing Materials prepared in connection therewith as the Remarketing Agent may need to supply at least one copy thereof to each potential customer who requests it;

(iii) the Issuer will provide the Remarketing Agent within seven Business Days after the interest rate is determined or by the time “money confirmations” are to be sent to customers, whichever is earlier, with a number of copies of the Remarketing Materials adequate to provide at least one copy of such Remarketing Materials to any customer or any potential customer for a period commencing on the date such Offering Materials is available and extending until the “end of the underwriting period” as defined in Rule 15c2-12 (the “*Remarketing Period*”) and, thereafter, for as long as may be required by Rule 15c2-12. During the Remarketing Period, the Issuer agrees to update, by written supplement or amendment or otherwise, the then final Remarketing Materials such that at all times during such period the then final Remarketing Materials will not contain an untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; and

(iv) the Issuer will undertake, in a written agreement or contract in a form reasonably acceptable to the Remarketing Agent and its counsel, for the benefit of Bondholders, to provide the information required by paragraph (b)(5) of Rule 15c2-12 to the persons or entities and at the times required by paragraph (b)(5) of Rule 15c2-12.

(c) ***Material Adverse Events; Default.*** If, at any time after the Effective Date, any event actually known to the Issuer shall occur which might materially adversely affect the Bonds or the

remarketing thereof, or if any Event of Default on the part of the Issuer or the Issuer under the Indenture or the Reimbursement Agreement shall occur, then the Issuer shall promptly notify the Remarketing Agent in writing of the circumstances and details of such event.

(d) **Amendments and Supplements.** The Issuer shall use reasonable commercial efforts to update, amend and supplement the Remarketing Materials, at the Issuer's expense, in order that the Remarketing Materials, at all times during the term of this Agreement, will be, to the actual knowledge of the Issuer, true and correct in all material respects and will not contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading. If, in the reasonable professional judgment of the Remarketing Agent, an event shall occur which requires the Remarketing Materials to be amended or supplemented in order to be true and correct in all material respects and not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading, then the Issuer shall, at its own expense, promptly upon the request of the Remarketing Agent, amend or supplement the Remarketing Materials in form and substance reasonably satisfactory to the Remarketing Agent. During the term of this Agreement, the Issuer shall cooperate with the Remarketing Agent to correct or complete, at the expense of the Issuer, the Remarketing Materials, as applicable, as aforesaid and shall not refuse any reasonable request of the Remarketing Agent for information concerning the Issuer or the Project for such purposes. The Issuer will not amend or supplement, or request the amendment or supplementation of, the Remarketing Materials prior to notifying the Remarketing Agent in writing of the proposed amendment or supplement thereto.

(e) **SEC Requirements.** The Issuer shall, at its own expense, take all steps reasonably requested by the Remarketing Agent that are necessary for the Remarketing Agent to comply with Rule 15c2-12 to the extent that Rule 15c2-12 is applicable. In addition, the Issuer, at its own expense, will take all steps reasonably requested by the Remarketing Agent that the Remarketing Agent considers necessary to register the sale of the Bonds by the Remarketing Agent under any federal or state securities law or qualify the Indenture under the 1939 Act to the extent that such laws or Act is applicable but the Issuer shall not have to submit to service of process in any state other than the State.

(f) **MSRB Rule G-34(c).** The Issuer hereby (i) authorizes and consents to the delivery by the Remarketing Agent to the Municipal Securities Rulemaking Board (the "MSRB") pursuant to MSRB Rule G-34(c) of the Letter of Credit, the Reimbursement Agreement, , and the Indenture and such other documents (if any) that establish an obligation to provide liquidity with respect to the Bonds or that set forth or define critical aspects of the liquidity facility for the Bonds that are required to be submitted by the Remarketing Agent to the MSRB pursuant to MSRB Rule G-34(c) (including any executed amendments, extensions or related changes thereto) (all such documents, "Rule G-34 Documents"), and (ii) covenants to provide to the Remarketing Agent, upon request, with executed PDF word-searchable copies of such Rule G-34 Documents in order to assist the Remarketing Agent in its timely filing of such Rule G-34 Documents in compliance with MSRB Rule G-34(c). The Issuer further agrees that the Remarketing Agent shall have no responsibility with respect to identifying any confidential or proprietary information in the Rule G-34 Documents and holds the Remarketing Agent harmless with respect to identifying and/or redacting any confidential or proprietary information in the Rule G-34 Documents. If the Issuer determines that any information in the Rule G-34 Documents is confidential or proprietary, the Issuer shall discuss such information with the Remarketing Agent and the potential redaction thereof, and upon the concurrence of the Remarketing Agent that such redaction is in compliance with MSRB Rule G-34(c), the Issuer will provide the Remarketing Agent with redacted copies of such Rule G-34 Documents for submission by the Remarketing Agent to the MSRB for purposes of compliance with MSRB Rule G-34(c).

**Section 6. Indemnification.** To the extent, if any, that a court of competent jurisdiction would enforce such agreement as not contrary to law or public policy, the Issuer agrees as follows:

(a) The Issuer agrees to pay, defend, protect, indemnify, save and hold harmless the Remarketing Agent and Issuer, and each affiliate, member, officer, director, official, employee and agent of the Remarketing Agent and Issuer, and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the 1933 Act, or Section 20 of the 1934 Act (each, an "Indemnified Party" and, collectively, the "Indemnified Parties") against any liability, loss, damages, costs, expenses of any nature (including interest and counsel fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively, the "Liabilities") caused by or directly or indirectly arising out of or in any way relating to (i) the performance by the Remarketing Agent of the Remarketing Agent's obligations under and in accordance with this Agreement, or those of their employees or agents arising from the performance of such obligations under this Agreement or (ii) the Bonds, the Project, , the Indenture or any document related to the foregoing (the "Transaction Documents") or any transaction or agreement related to any of the foregoing except for claims arising from gross negligence, fraud, misrepresentation or willful misconduct by any Indemnified Party (other than the Issuer). This indemnity includes any action taken or omitted within the scope of this Agreement or any such action taken or omitted upon telephonic, telegraphic, or written instructions received or reasonably believed to have been received by the Remarketing Agent from the Bank, the Trustee, or the Issuer.

(b) To the fullest extent permitted by applicable law, the Issuer shall also indemnify and hold harmless the Indemnified Parties against (i) any and all losses, claims, damages, expenses, actions or liabilities, joint or several, to which any of the Indemnified Parties may become subject under any statute or regulation or at common law or otherwise and, except as hereinafter provided, will reimburse the Indemnified Parties for any legal or other expense reasonably incurred by them or any of them in connection with investigating or defending any such losses, claims, damages, expenses or actions, whether or not resulting in any liability, insofar as such losses, claims, damages, expenses, actions or liabilities arise out of or are based upon any untrue statement or alleged untrue statement or misleading statement or alleged misleading statement of a material fact by the Issuer relating to the Issuer or the Project contained in any official statement, offering circular or other document (collectively, the "Disclosure Documents") used by the Remarketing Agent and approved by the Issuer in connection with any remarketing of the Bonds (including any disclosure materials or offering circular furnished to the Remarketing Agent), or arise out of or are based upon the omission or alleged omission from the Disclosure Documents of any material fact relating to the Issuer or the Project necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, except to the extent that such losses, claims, damages, expenses, actions or liabilities are caused by an untrue statement or alleged untrue statement in, or omission or alleged omission from, information furnished in writing by or on behalf of any Indemnified Party expressly for use therein; and (ii), if the Issuer takes any action or consents to the taking of any action, including, but not limited to, consents to amendments or supplements to any of the documents related to the financing transaction or to the Bonds without first obtaining the consent of the Remarketing Agent, against any and all losses, claims, damages, expenses, actions or liabilities, joint or several, to which the Indemnified Parties or any of them may become subject under the 1933 Act, the 1934 Act, the 1939 Act, the rules or regulations under said acts, or any amendment to any of said acts, to the extent that such losses, claims, damages, expenses, actions or liabilities arise out of or are based upon the failure to register the Bonds under the 1933 Act or to qualify the Indenture under the 1939 Act.

(c) Promptly after receipt by an Indemnified Party of notice of the commencement of any action in respect of which indemnification may be sought against the Issuer under paragraphs (a) or (b) of this section, such Indemnified Party shall notify the Issuer in writing; but the omission to so notify the Issuer will not relieve the Issuer from any liability which it may be under to any Indemnified Party otherwise than under paragraphs (a) or (b) of this section nor affect any rights it may have otherwise than under this section to participate in and/or assume the defense of any action brought against any Indemnified Party. In case such action is brought against any Indemnified Party, and it notifies the Issuer of the commencement thereof, the Issuer shall be entitled to participate in, and, to the extent that it so chooses, to assume the

defense thereof (including the employment of counsel reasonably satisfactory to the Indemnified Party), and the Issuer shall be liable for the payment of all fees and expenses relating to such defense and shall have the right to negotiate and consent to the settlement thereof; provided, no settlement may be effected which imposes a pecuniary liability or obligatory duty on the Issuer without its prior written consent. Any one or more of the Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but, after notice from the Issuer to such Indemnified Party of its election to assume the defense thereof, the fees and expenses of such separate counsel shall be at the sole expense of such Indemnified Party unless the employment of such counsel has been specifically authorized in writing by the Issuer or if there exists or arises a conflict of interest between the Issuer and an Indemnified Party. The Issuer shall not be liable for any settlement of any such action effected without its written consent, but if settled with the consent of the Issuer, or if there be a final judgment for the plaintiff in any such actions to which the Issuer has received notice in writing as hereinabove required, the Issuer agrees to indemnify and hold harmless the Indemnified Party from and against any loss or liability by reason of such settlement or judgment.

(d) The indemnity provided by this section shall be in addition to any other liability that the Issuer may otherwise have hereunder, under the Loan Agreement, at common law or otherwise and is provided solely for the benefit of each of the Indemnified Parties and their respective successors, assigns and legal representatives, and no other person shall acquire or have any right under or by virtue of such provisions of this Agreement.

(e) In order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraphs (a) or (b) of this section is for any reason held to be unavailable from the Issuer with respect to matters covered by such paragraphs (a) or (b), the Issuer, on the one hand, and the Indemnified Party (other than the Issuer), on the other hand, with respect to such matter, shall contribute to the aggregate losses, damages, expenses, liabilities or claims to which the Issuer, on the one hand, and the Indemnified Party (other than the Issuer), on the other hand, may be subject proportionately so that the Indemnified Party (other than the Issuer) is responsible for that portion represented by the percentage that the underwriting discount, remarketing agent fee or placement fee, if any, payable to the Indemnified Party (other than the Issuer) hereunder with respect to the distribution in question, bears to the aggregate offering price, with the Issuer responsible for the balance; provided, however, that in no case (other than in the event of gross negligence, fraud, misrepresentation or willful misconduct by any Indemnified Party (other than the Issuer)) shall the Indemnified Party be responsible for any amount in excess of the fees paid by the Issuer to the Indemnified Party in connection with the issuance and administration of the Bonds. The contribution provided for in this paragraph shall also extend, without limitation, to any and all expenses whatsoever reasonably incurred in connection with investigating, preparing for or defending against, or providing evidence, producing documents or taking any other reasonable action in respect of, any such loss, damage, expense, liability or claim (or action in respect thereof), whether or not resulting in any liability, and shall include any loss to the extent of the aggregate amount paid in settlement of any litigation, commenced or threatened, or of any claim whatsoever as set forth herein if such settlement is effected with the written consent of the Issuer. For purposes of this paragraph (e), each Indemnified Party shall, under the same circumstances, have the same rights to contribution as does the Remarketing Agent hereunder. Promptly after an Indemnified Party (other than the Issuer) entitled to contribution under this paragraph (e) shall have been served with the summons or other first legal process or shall have received written notice of the threat of a claim in respect of which contribution may be sought hereunder, such Indemnified Party shall, if a claim for contribution is to be made against the Issuer under this paragraph (e), notify the Issuer in writing of the commencement thereof; but the omission to so notify the Issuer shall not relieve the Issuer from any liability that it may have other than pursuant to this paragraph (e); provided, however, that any notice given by the Remarketing Agent for purposes of, and as provided in, paragraph (c) of this section shall constitute notice for purposes of this paragraph (e). Nothing herein shall require that the Issuer contribute, or that any Indemnified Party not contribute, to any losses, damages, expenses, liabilities, or



claims arising out of gross negligence, fraud, misrepresentation, or willful misconduct by an Indemnified Party (other than the Issuer).

(f) The Issuer agrees to reimburse any Indemnified Party for any expense (including reasonable fees and expenses of counsel) incurred as a result of producing documents, presenting testimony or evidence, or preparing to present testimony or evidence (based upon time expended by an Indemnified Party at its then current time charges), in connection with any court or administrative proceeding (including any investigation which may be preliminary thereto) arising out of or relating to any public distribution of the Bonds. The Issuer, however, will not be required to reimburse any Indemnified Party if such court or administrative hearing arises out of gross negligence, fraud, misrepresentation or willful misconduct by an Indemnified Party.

#### **Section 7. Fees and Expenses.**

(a) During any period the Bonds bear interest at the Variable Rate, the Issuer will pay the Remarketing Agent an upfront remarketing fee of \$0 and an annual remarketing fee (the “*Remarketing Fee*”) in an amount equal to 0.10% of the aggregate weighted average daily principal amount of Bonds Outstanding. The Remarketing Agent shall bill the Issuer to collect its Remarketing Fee. The Issuer will pay such Remarketing Fee to the Remarketing Agent quarterly in arrears on each March 1, June 1, September 1, and December 1, commencing on December 1, 2024 and computed on the basis of the average principal amount of the Bonds outstanding during each preceding quarterly (or partial quarter) period, with partial quarterly payments to be prorated based upon the number of days elapsed and the number of days in the quarterly period; provided, however, that in the event 60 days following receipt of the Remarketing Agent’s notice of resignation no successor Remarketing Agent has been appointed and accepted such appointment, the fee the Issuer pays to the Remarketing Agent set forth in this section shall increase 0.10% per annum every 30 days until such time as a successor Remarketing Agent has been appointed by the Issuer and accepted such appointment; it being the express agreement of the parties hereto that in no event shall the remarketing fee hereunder exceed [0.3125%] per annum. When Bonds are remarketed in connection with the conversion of the interest rate on the Bonds to a rate mode other than Variable Rate, the Issuer and the Remarketing Agent will agree on a fee.

(b) The Issuer will pay all reasonable out of pocket expenses of delivering remarketed Bonds and reimburse the Remarketing Agent for all reasonable direct, out of pocket expenses actually incurred by it as Remarketing Agent, including but not limited to the reasonable counsel fees, disbursements and the cost of funds paid by the Remarketing Agent in connection with the Remarketing Agent’s voluntary purchase of tendered Bonds to the extent such Bonds are not remarketed (as such cost is reduced by the payment of interest on such purchased Bonds).

(c) The Issuer agrees to pay the Remarketing Agent’s fees and expenses under this Agreement without regard to any claim, set-off, defense or other right that the Issuer may have at any time against the Remarketing Agent or any other person, whether in connection with this Agreement, the Bonds or any unrelated transaction.

(d) Notwithstanding anything herein or in the Indenture to the contrary, the Remarketing Agent shall not have any obligation hereunder or under the Indenture to remarket the Bonds or otherwise perform any services with respect thereto if the Issuer shall have failed to pay when due any amounts due hereunder.

**Section 8. Representations, Warranties, Covenants and Agreements of the Remarketing Agent.** The Remarketing Agent, by its acceptance hereof, represents and warrants as follows:

(a) That it is authorized by law to perform all the duties imposed upon it as Remarketing Agent by the Indenture and this Agreement;

(b) That the Remarketing Agent has full power and authority to execute and deliver this Agreement and to take all actions required or permitted to be taken by the Remarketing Agent by or under, and to perform and observe the covenants and agreements on its part contained in, this Agreement and the Indenture;

(c) That the execution and delivery of this Agreement and the consummation of the transactions contemplated herein and in the Indenture will not conflict with or constitute on the part of the Remarketing Agent a breach of or a default under its organizational documents, its bylaws, or any statute, indenture, mortgage, deed of trust, lease, note or other agreement or instrument to which the Remarketing Agent is a party or by which it or its properties are bound, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Remarketing Agent or any of its activities or properties;

(d) That, assuming the due authorization, execution and delivery of this Agreement by the Issuer and the enforceability of this Agreement against the Issuer, this Agreement is the legal, valid and binding obligation of the Remarketing Agent, enforceable against the Remarketing Agent in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or at law; and

(e) That the Remarketing Agent is a licensed Financial Industry Regulatory Authority broker/dealer, is registered as a municipal securities dealer under the 1934 Act and meets the qualifications for remarketing agent under the Indenture.

**Section 9. Representations, Warranties, Covenants and Agreements of the Issuer.** The Issuer, by its acceptance hereof, represents, warrants, covenants, and agrees with the Remarketing Agent that:

(a) the Issuer has all requisite power and authority to execute, deliver and perform all its obligations under this Remarketing Agreement and to consummate the transactions contemplated hereby;

(b) the execution, delivery and performance by the Issuer of this Remarketing Agreement has been duly authorized by all requisite action and does not and will not (i) violate any provision of law, rule, regulation, order, writ, judgment, injunction, decree, determination or award currently in effect having applicability to the Issuer; (ii) result in a breach of or constitute a default under any indenture or loan or credit agreement or any other agreement, lease or instrument to which the Issuer is a party or by which its assets or properties may be bound or affected; or (iii) result in or require the creation or imposition of any lien, charge or other encumbrance upon or with respect to any of the assets or properties now owned or hereafter acquired by the Issuer;

(c) No consent, approval or other action by or any registration with, notice to or filing with any person or any court or administrative or governmental body is or will be necessary for the valid execution, delivery or performance by the Issuer of this Remarketing Agreement, other than such consents and approvals that have heretofore been obtained and such registrations, notices or filings as may be necessary under the blue sky laws of any jurisdiction;

(d) This Remarketing Agreement constitutes the legal, valid, and binding obligation of the Issuer enforceable against the Issuer in accordance with its terms, subject to the qualification that enforceability of this Remarketing Agreement may be limited by bankruptcy, insolvency, reorganization, moratorium, or similar laws now or hereafter in effect generally affecting creditors' rights;

(e) Nothing herein or in any certificate, notice or other written information furnished or to be furnished by the Issuer in connection with this Remarketing Agreement contains or will contain any untrue statement of a material fact, or omits or will omit to state a material fact necessary to make the statement therein, in light of the circumstances under which they were made, not misleading; and

(f) To the best knowledge of the Issuer, the Remarketing Materials (except as to the contents under the caption "The Letter of Credit and the Bank Reimbursement Agreement" as to which no Issuer representation is made), does not and will not contain any untrue, incorrect or misleading statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(g) During a remarketing period, the Issuer will promptly notify the Remarketing Agent by electronic means of any material adverse changes of which the Issuer has actual knowledge that may affect the remarketing of the Bonds or any fact or circumstance of which the Borrower has actual knowledge that may constitute, or with the passage of time will constitute, an Event of Default under the Indenture, the Letter of Credit or the Reimbursement Agreement.

**Section 10. Term of Agreement.** This Agreement shall become effective on the Effective Date and shall continue in full force and effect until this Agreement is otherwise terminated pursuant to the terms and conditions hereof.

**Section 11. Governing Law.** This Agreement shall be interpreted and construed under the provisions of the laws of the State.

**Section 12. Dealing in Bonds by the Remarketing Agent.** The Remarketing Agent, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds, including, without limitation, any Bonds offered and sold by the Remarketing Agent pursuant to this Agreement, and may join in any action that any Bondholder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer and may act as depository, trustee, or agent for any committee or body of Bondholders secured hereby or other obligations of the Issuer as freely as if it did not act in any capacity hereunder.

**Section 13. Remarketing Agent Not Acting as Fiduciary.** The Remarketing Agent and the Issuer each acknowledge and agree that (i) the transactions contemplated by this Agreement are arm's-length commercial transactions between the Issuer and the Remarketing Agent, (ii) in connection therewith and with the discussions, undertakings and procedures leading up to the consummation of such transactions, the Remarketing Agent is and has been acting solely as a principal or agent, as applicable, and the Remarketing Agent has not sought to act, been engaged to act or intended to act as an advisor, municipal advisor or fiduciary of the Issuer, (iii) the Remarketing Agent has not assumed an advisory or fiduciary responsibility in favor of the Issuer with respect to the transactions contemplated hereby or the discussions, undertakings and procedures leading thereto (irrespective of whether the Remarketing Agent has advised or provided other services or is currently advising or providing other services to the Issuer on other matters) and the Remarketing Agent has no obligation to the Issuer with respect to the transactions contemplated hereby except the obligations expressly set forth in this Agreement and (iv) the Issuer has consulted its own

legal, financial and other advisors to the extent it deems appropriate. In accordance with its obligations under MSRB Rule G-17, the Remarketing Agent agrees to deal fairly with the Issuer.

**Section 14. Intention of Parties.** It is the express intention of the parties hereto that any purchase, sale, or transfer of any Bonds, as herein provided, shall not constitute or be construed to be the extinguishment of any Bonds or the indebtedness represented thereby or the reissuance of any Bonds.

**Section 15. Conflict.** Notwithstanding anything to the contrary that may be contained in this Agreement or in the Indenture, in the event of a conflict between the terms of this Agreement and the terms of the Indenture, the terms of the Indenture in all such instances shall be controlling.

**Section 16. Amendments.** No amendment, modification, supplement, or waiver in respect of this Agreement will be effective unless in writing and signed by the parties hereto.

**Section 17. Third-Party Beneficiaries.** The Issuer and Remarketing Agent hereby acknowledge and agree that the Indemnified Parties identified in Section 6 hereof are third-party beneficiaries of this Agreement and shall be entitled to enforce their respective rights hereunder as if they were parties to this Agreement.

**Section 18. Miscellaneous.**

(a) Except as otherwise specifically provided in this Agreement, all notices, demands and formal actions under this Agreement shall be in writing and either (i) hand delivered, (ii) sent by electronic mail or other electronic means or (iii) mailed by first class certified mail, return receipt requested, postage prepaid, to the addressee set forth in the Indenture. The Remarketing Agent, the Issuer, the Trustee, and the Bank may, by notice given under the Indenture, designate other addresses to which subsequent notices, requests, reports, or other communications shall be directed.

(b) Other than as provided in Section 6 and 17 hereof, this Agreement shall inure to the benefit of and be binding only upon the parties hereto and their respect successors and assigns. The terms “successors” and “assigns” shall not include any purchaser of any of the Bonds merely because of such purchase. No Bondholder or other third party shall have any rights or privileges hereunder.

(c) All of the representations and warranties of the Issuer and the Remarketing Agent in this Agreement shall remain operative and in full force and effect as of the date hereof, regardless of (i) any investigation made by or on behalf of the Remarketing Agent or the Issuer, (ii) the offering and sale of and any payment for any Bonds hereunder or (iii) termination or cancellation of this Agreement.

(d) Nothing in this Agreement shall be construed to make any party an employee of the other or to establish any fiduciary relationship between the parties except as expressly provided herein and in the Indenture.

(e) If any provision of this Agreement shall be held or deemed to be or shall, in fact, be invalid, inoperative, or unenforceable for any reason, such circumstances shall not have the effect of rendering any other provision or provisions of this Agreement invalid, inoperative, or unenforceable to any extent whatsoever.

(f) This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute one and the same document.

[Remarketing Agent's Signature Page to Remarketing Agreement]

**STIFEL, NICOLAUS & COMPANY,  
INCORPORATED**

By: 

\_\_\_\_\_  
Name: Bryan Stelmack  
Title: Managing Director

[Issuer's Signature Page to Remarketing Agreement]

**BROOMFIELD URBAN RENEWAL AUTHORITY**

\_\_\_\_\_  
Chair

ATTEST:

\_\_\_\_\_  
Secretary

APPROVED TO FORM:

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

*KF*



**A. Public Hearing - Village of West View PUD Amendment, Final Plat, SDP and Comp Plan Amendment, Reimbursement Agreement**

To be reviewed concurrently with Item 7B

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Action Items Item: 7A.
Presented By	
Lynn Merwin	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

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

[View Presentation](#)

Applicant Village of West View, LLC has submitted an application for a PUD Amendment, Final Plat, Site Development Plan and Comprehensive Plan land use map amendment for two parcels within the Great Western Park PUD Plan area. The properties are located at the northwest corner and southwest corner of Skyestone Pkwy and Simms St. The northern parcel is 3.9 acres in size and the southern parcel is 9.4, for a total of 13.3 acres.

### **Attachments**

[Village of West View - City Council Memo.pdf](#)

[2024-158 Village of West View PUD-A, FP, SDP, Comp Plan-A Resolution.pdf](#)

[2024-163 IGA between CCOB and City of Westminster Resolution.pdf](#)

[Ordinance 2259 Reimbursement Agreement for Village of West View.pdf](#)

[Village of Westview - Sales Use Tax Reimbursement Agreement - Final Draft 110424 .pdf](#)

## Summary

[View Correspondence](#) and [BroomfieldVoice Page](#)  
[View Presentation](#)

Applicant Village of West View, LLC has submitted a development review application for a Planned Unit Development (PUD) Plan Amendment, Final Plat, Site Development Plan and Comprehensive Plan land use map amendment for two parcels within the Great Western Park PUD Plan area. The properties are located at the northwest corner and southwest corner of Skyestone Pkwy and Simms Street. The northern parcel is 3.9 acres in size and the southern parcel is 9.4 acres, for a total of 13.3 acres.

The existing PUD plan anticipates neighborhood commercial uses within both properties. The proposed PUD amendment would allow for mixed-use development which includes residential uses on the southern parcel and establish new and updated requirements such as setbacks, floor area ratio (FAR), inclusionary housing, etc.

The proposed Site Development Plan (SDP) shows the northern parcel will feature a restaurant with recreation facilities and outdoor gathering spaces while the southern parcel will feature both 78 condominium style residential units as well as approximately 14,500 sq ft of commercial uses as shown in detail on the SDP. The total development will include up to 30,000 sq ft of commercial space (in free-standing and first-floor of mixed-use space) and 78 residential units.

The underlying Comprehensive Plan Land Use Map designates the northern property as commercial and the southern property as commercial and open lands. The proposal for mixed-use on the southern parcel is not consistent with the land use designations established for the southern parcel. As such, an amendment to the Comprehensive Plan land use map is also being proposed from commercial and open lands to mixed-use commercial which permits both commercial and residential uses.

The proposal includes an intergovernmental agreement between the City and County of Broomfield and the City of Westminster. This agreement outlines the transfer of cash-in-lieu funds for the Simms Street improvements adjacent to the subject parcels. The Simms Street improvements identified for this development are proposed to be deferred to a later date and would be undertaken by the City of Westminster as part of a larger capital improvement project for the widening of Simms Street in the area.

A Sales and Use Tax Reimbursement Agreement between the City and County of Broomfield and the Developer is also proposed to support the attraction and establishment of retail and restaurant businesses and fund public improvements. The maximum reimbursements are up to \$2.1M over the initial ten-year period and will be generated through a fifty percent (50%) share of the use tax paid and up to thirty-two percent (32%) of any sales tax generated from retail and restaurant activity within the project.

New residential developments are required to include income aligned housing by providing either on-site units or a cash-in-lieu payment as established in Chapter 17-76 of the Broomfield Municipal Code. The applicant is proposing a total of nine affordable units, which is twelve percent (12%) of the proposed units, and is committed to providing the price and income-restricted units on-site, at 90% area median income (AMI), for a period of 30 years. Five of these units will be one-bedroom and four units will be two-bedroom. This proposal is consistent with the inclusionary housing requirements in the Broomfield Municipal Code.

Staff has identified neighbor concerns with the proposed reduction of an existing 100' buffer to 50' as a key issue with the proposal as addressed in greater detail below.



Proposed Resolution No. 2024-158 if approved by Council, would approve the Proposed Great Western Park Planned Unit Development Plan Amendment No. 6, and Great Western Park Filing No. 7, Lots 1 and 2 (Village of West View) Final Plat and Site Development Plan and a Comprehensive Plan Amendment.

Proposed Resolution No. 2024-163 if approved by Council, would approve the Intergovernmental Agreement between the City and County of Broomfield and the City of Westminster and delegate authority for the City and County Manager to sign the agreement once finalized with Westminster.

Proposed Ordinance No. 2259, if approved by Council, would approve a Sales and Use Tax Reimbursement Agreement between the City and County of Broomfield and the developer for a reimbursement of use and sales tax from the development area. The maximum reimbursement is up to \$2.1 million. The Second reading of this ordinance is planned for December 10, 2024.

## Financial Considerations

The proposed development is anticipated to result in a net positive fiscal impact, estimated to be \$225,000 annually, from the residential and commercial development and the proposed business activities. This estimate is based on (a) revenues from a combination of real and business personal property tax, use tax, and degenerated sales tax revenue from located business, (2) expenses related to providing CCOB public services and programs (to residents, businesses, and business employees and customers), and (3) the proposed development support reimbursement and the Broomfield/Westminster IGA contribution.

The annual revenues will be increased property tax revenues, from both the commercial and residential development, and sales tax revenues, from the restaurants, recreation and retail businesses. Additionally, the businesses will create full and part-time employment opportunities.

The development support agreement approach has three key elements. First, the CCOB real and business property tax will remain unencumbered and flow to the general fund and the pledged funding areas (Human Services and Broomfield Public Library) to fund the programs and services demanded by, and accessed by, the residents and others. Second, the sales and use tax revenues will be shared by the Broomfield and the developer (approximately in a ratio of 2.5:1). Third, the approach for sharing sales tax revenues is varied to provide an incentive for the developer, and its tenants, to invest and grow sales in the future. Additionally, this approach does not impact Jefferson County Schools nor North Metro Fire and Rescue District revenues.

The Intergovernmental Agreement with the City of Westminster includes provisions whereby the developer will deposit the entire cash-in-lieu amount for the public improvements (approx. \$300,000) with Broomfield at time of building permit. Broomfield will hold and invest the funds for up to 8 years and ensure a 6% annual rate of return on the deposit over the eight years. At any time, Westminster may request the funds for use with the Simms Street public improvements, but after eight years if the funds have not been requested, the funds will no longer continue to grow at 6%. The funds will simply grow at the rate of return in the account the funds are deposited with no additional requirement for Broomfield to add any additional funds after eight years. Depending on the rate of return the City receives on the deposited funds, Broomfield may be contributing \$0 to \$180,000 over the eight years to the funds.

## Prior Council or Other Entity Actions

February 10, 2009 - City Council approved the Great Western Park PUD Plan second amendment to revise land uses with the subject properties designated for neighborhood commercial uses (Resolution 2009-5)

[December 18, 2018](#) - City Council reviewed a concept plan for a 130-unit (180,000 square feet) senior independent living community on the southern parcel (10795 Simms)

[March 26, 2019](#) - City Council reviewed a concept plan for a 140-unit, 150,000 square foot assisted living building on the northern parcel (10803 Simms)

[May 18, 2021](#)- Council reviewed a concept plan for a 240-unit affordable multi-family development on the subject properties

[March 1, 2022](#) - Council reviewed a concept plan for a mixed use development on the subject properties (current proposal)

## Boards and Commissions Prior Actions and Recommendations

The proposal was reviewed by the Parks, Recreation and Senior Services Advisory Committee on August 21, 2024. The Committee indicated support for the proposal.

The proposal was reviewed by the Land Use Review Commission on September 9, 2024, which voted unanimously to recommend approval of the proposal.

## Proposed Actions / Recommendations

Following and subject to the results of the public hearing, if the Council wishes to approve the application as presented, it is recommended that...

**That Resolution No. 2024-158 (development) be approved**

If Council wishes to approve the Intergovernmental Agreement with the City of Westminster, it is recommended that...

**That Resolution No. 2024-163 (IGA) be approved.**

If Council wishes to approve the Sales and Use Tax Sharing Agreement it is recommended that...

**That Ordinance No. 2259 (Sales and Use Tax Reimbursement Agreement) be approved on First Reading and ordered published. The Ordinance is scheduled for consideration on Second Reading on December 10, 2024.**

## Alternatives

If the proposed plan does not comply with the applicable BMC review standards or is inconsistent with the intent of the Comprehensive Plan, reject or remand Resolution No 2024-158:

- Remand the case to the Land Use Review Commission for additional review and recommendations, then Council can postpone action on the resolution and continue the hearing to a date certain; or
- Direct the City and County Attorney to draft findings to support denial of the application and continue the application for a decision to a date certain.

Reject Resolution No. 2024-164 (IGA) and/or Ordinance 2259.

# Key Details

## Sustainability

The applicant will be incorporating a number of sustainable initiatives in the subject proposal including low water landscaping, electric vehicle parking, Energy Star appliances, and smart thermostats within units. The sites will also be accessible through trails and sidewalks so area residents and employees can opt to walk or bicycle to the property instead of driving if desired.

## Income-Aligned Housing

Broomfield Municipal Code requires new residential developments to provide income-aligned housing support or units as part of their projects. The code encourages the construction of on-site deed restricted units, but provides an option for satisfying this requirement through a cash-in-lieu payment. The applicant's PUD Plan Amendment and Site Development Plan outline the applicant's income-aligned housing proposal. The project will include a total of nine affordable units, which is the required twelve percent (12%) of the total 78 units. These income-restricted units will be provided on-site at 90% AMI, through a thirty (30) years deed-restriction. Five of these units will be one-bedroom and four units will be two-bedroom. This proposal is consistent with the Broomfield Municipal Code requirements. A Memorandum of Understanding with requirements and procedures for for-sale inclusionary housing has been signed by the applicant and is discussed later in this staff report. The applicant has reviewed the covenant outlining the commitment to providing the income-aligned units for 30 years. This covenant will be signed by the future homeowners at point of sale.

## Public Land Dedication (PLD)

Broomfield Open Space, Parks, Recreation and Trails (OSPR) Plan outlines the recommended public land dedication (PLD) requirements for new residential projects. The subject proposal is located within the Great Western Park subdivision, which includes the Skyestone Community, the commercial properties to the north of Walnut Creek and two creek corridors. Currently, a total of 43 acres of public lands have been dedicated through the Great Western Park subdivision platting and replatting process. Based on the number of residential units within the Skyestone community, a total obligation of 28.8 acres has been met through the dedicated lands, resulting in a PLD overage of 14.2 acres.

The proposal includes a request to apply the existing overage of public land dedication to cover the current PLD requirement which is not uncommon within a subdivision. The subject proposal includes a total of 78 residential units with 14 units being one-bedroom and 64 units being two to three bedroom units. To calculate the total number of residents, the apartment ratio of 1.91 residents/unit was applied to the one-bedrooms and the townhome ratio of 2.5 residents/unit was applied to the two and three-bedrooms. The anticipated population of 160 residents results in a total requirement of 4.49 acres of PLD. The applicant has provided a PLD table included on the SDP as shown below outlining how the requirements for this proposal will be met with the prior dedication.

PUBLIC LAND DEDICATION		
OBLIGATION FORMULA: (BASED ON 24 ACRES PER 1,000 RESIDENTS)	METHODOLOGY	PLD PROVIDED
14 -1-BEDROOM CONDOS X 1.91 = 27 RESIDENTS	EXISTING PUBLIC LAND DEDICATION IN GREAT WESTERN PARK PUD AREA = 43 ACRES  PLD REQUIREMENTS BASED ON EXISTING UNITS = 28.8 ACRES  TOTAL OVERAGE = 14.2 ACRES  14.2 ACRES – 4.49 ACRES OBLIGATION = 9.71 REMAINING EXCESS ACRES	<u>DEDICATION</u> N/A
64 - 2 AND 3 BEDROOM CONDOS X 2.5 = 160 RESIDENTS		<u>CASH-IN-LIEU PAYMENT</u> N/A
187 TOTAL RESIDENTS X 24 ACRES/1000 = 4.49 ACRES		NO DEDICATION OR PAYMENT REQUIRED DUE TO OVERAGE OF EXISTING DEDICATION

*Public Land Dedication Table*

## Schools

The proposed development is located within the Jefferson County school district and is served by Lukas Elementary, Wayne Carle Middle, and Standley Lake High School. The school district has reviewed the request and determined that the three schools that will serve this development have enough capacity for any future students generated by the proposal. All three schools are generally located north and east of Stanley Lake.

## Key Issues Identified By Staff

**Neighbor concerns related to landscape buffer** - The existing approved PUD Plan for the subject property established a 100’ parking and building setback area along with a 6’ high berm along the southern and western edge of the southern parcel to buffer the anticipated neighborhood commercial development for existing area residents.

The subject proposal includes a reduction to the 100’ landscape buffer located along the western and southern property line of the southern parcel as outlined in the proposed PUD plan amendment. The applicant has proposed to reduce this buffer area to a width of 50’, which is specified in the proposed PUD and Site Development Plan. The reduced buffer area does not feature a berm due to drainage concerns but instead includes landscaping to provide screening from adjacent residences. The original buffer was intended to provide a transition from future commercial uses to the existing residential development in Walnut Creek. The current proposal identifies residential uses, instead of the originally anticipated commercial uses, adjacent to the buffer area. The applicant has worked with Broomfield’s Landscape Architect to provide landscape screening including evergreen materials and large deciduous trees from the adjacent residences.

## Links to Application Materials

[PUD Plan Amendment](#)

[Final Plat](#)

[Site Development Plan](#)

[Comprehensive Plan Amendment](#)

[Intergovernmental Agreement](#)

## Supplemental Documents

[Color Plans](#)

[Narrative](#)

[Topography Exhibit](#)

## How to Submit Public Comments on this Proposal

Email directly to [Planning@broomfield.org](mailto:Planning@broomfield.org)

# Overview of Application

The subject proposal is for a mixed-use development proposal located on two properties; one at the northwest corner of Skyestone Pkwy and Simms St and the other at the southwest corner. The two parcels of land total 13.3 acres in size. The application includes a PUD Plan Amendment, a Final Plat, a Site Development Plan and a comprehensive plan land use map amendment.



*Site Plan - North is to Left*

The northern property will feature a restaurant/event space with an outdoor courtyard with additional seating and lawn games. The site will include a total of 12 pickleball courts including indoor courts, outdoor covered courts and outdoor uncovered courts for a variety of play experiences.

The southern property will be mixed-use and include both commercial and residential uses. The residential uses will include 70 attached condominium (condo) units along the western and southern border distributed within 14 buildings with 5 units per building, as well as 8 condo style units above the commercial buildings. The site features 14 one-bedroom units, 46 two-bedroom units and 18 three-bedroom units.

The commercial buildings will be located centrally and to the eastern portion of the site fronting Simms Street and Skyestone Parkway. These commercial tenant spaces are intended to provide retail, office and

restaurant uses. One of the spaces is intended to be a quick service restaurant with a drive-through. Additional drive-through uses are not permitted on the property as discussed in the PUD plan.

## Property Owner and Applicant

Property Owner: Taylor Morrison of Colorado, Inc.  
Applicant: Village of West View, LLC

## Concept Review Plans

A concept review was held for the proposed development on [March 1, 2022](#). The conceptual review submittal differs slightly from the current proposal in that the original plan identified an additional drive-through commercial pad site within the northern parcel. This property is now entirely utilized for the restaurant and associated recreational areas.

In addition, at the time of the conceptual proposal, the applicant had indicated the 100' buffer area along the western and southern property line would be revised to 30' to 40' in width. At this meeting, several adjacent property owners identified concerns with the buffer width. These concerns were shared by some of the members of City Council. The applicant is proposing to expand the buffer to a width of 50' for buildings. The applicant has identified that the buffer width of 75' as requested by adjacent residents at the concept review meeting is not financially feasible for the proposal.

Other specific comments provided at the concept review meeting are listed below:

- Request to include additional information on sound impacts from pickleball. Applicant has addressed sound impacts in their [narrative](#) and has designed the site to utilize buildings and sound walls surrounding the outdoor courts to mitigate their impacts. A cushion court system has also been utilized to mitigate impacts.
- Request to return the site to the original grade which will be completed as discussed later in this staff report.
- Request to include on-site affordable units which have been included in the project.
- Request to include play areas which the applicant has included in the form of a pocket park lawn area and grass areas between residential buildings. Various games and play equipment for all ages will be provided across Skyestone Parkway to the north at the pickleball complex and a public park is to the west of the northern property.

City Council was generally supportive of the proposal.



Concept Review Plan (2022)

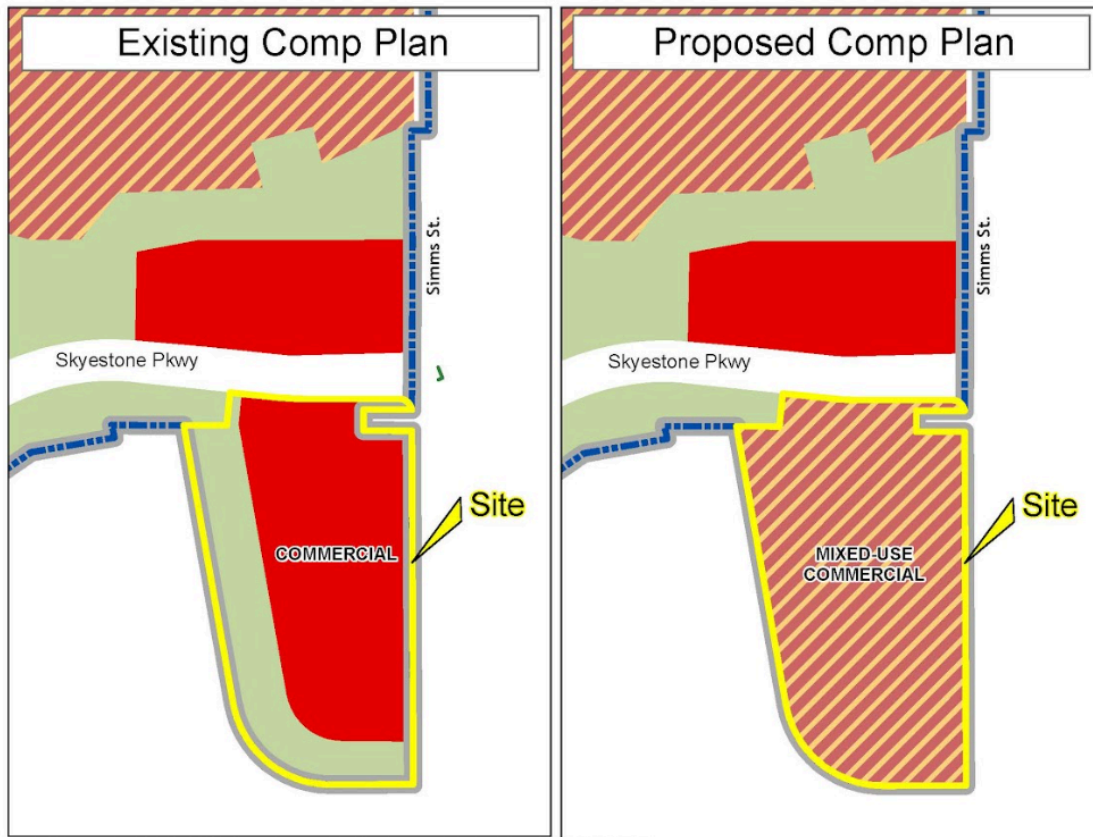
## Applicable City and County of Broomfield Plans

### Relationship to Comprehensive Plan

The Broomfield Comprehensive Plan land use map designation for the northern parcel is “Commercial” while the southern parcel is designated “Open Lands” and “Commercial”. The northern property is consistent with the commercial designation for the parcel and will remain unchanged.

The commercial category in the Comprehensive Plan intends the land use to be entirely commercial (office/retail) with no residential uses and the open lands designation does not intend for development. The application is not consistent with the land use designation on the southern site and is proposed for amendment to change the designation of the southern parcel to entirely mixed-use commercial which permits a variety of uses including residential when approved through the PUD process. The PUD amendment is proposing to limit the proposed residential adjacent to the existing residential land uses since these would be compatible land uses. The commercial land uses would be located interior to the site and along Simms Street.

The following map shows a side-by-side comparison of the existing comprehensive plan designation for the southern parcel and the proposed comprehensive plan designation of mixed-use commercial.



*A Portion of the 2016 Comprehensive Plan Land Use Map*

## Goals and Policies of the Comp Plan

Elements of the proposed project could help meet the following Comprehensive Plan goals and policies:

Goal LU-C: Residential Neighborhoods. “Continue to encourage and support community of neighborhoods containing a variety of housing types, while maintaining existing single-family residential areas of Broomfield.”

Goal LU-A: Mix of Land Uses “Plan for an appropriate mix of land uses that ensures connectivity, livability, flexibility, environmental sustainability, and economic vitality.”

Policy LU-E.13: “Encourage and support a variety of business employers and industries

Staff believes the application is complementary to the goals, objectives and policies, as well as the intent of the Comp Plan.

## Financial Plan

The proposed mixed-use development is a change from the land use assumptions in Broomfield’s long-range financial plan. Previously, the land use assumption had anticipated a general commercial development, including neighborhood retail, cafe/dining, and commercial/workspace. The proposal calls for a balance of commercial and residential uses, which will include for-sale, moderate density residential. The proposed commercial activity will center on a primary restaurant/recreation concept, retail shops, smaller dining/beverage spaces, and neighborhood retail and offices. The development is proposed to include about 30,000 square feet of combined commercial space and 78 for-sale residential units.



The proposed development will have a positive net fiscal impact estimated to be \$225,000 annually (after accounting for the proposed Development Support reimbursement agreement). This outcome occurs primarily due to the sales tax generated from the restaurant, recreation and retail anticipated opening in this development.

The net fiscal impact is below the anticipated outcome from the previous single-use commercial impact. However, as evidenced by both the time duration from the original residential development phase and the previous proposed uses, a commercial-only development on this site is unlikely, today or in the future. A proposed commercial-led mixed-use on this site results in both a positive fiscal impact and community-serving uses and activities.

## **Economic Outcomes**

The community economic impact from the proposed development includes new and expanding businesses, employment and career opportunities, increased moderate-density, for-sale housing, homeownership, and increased consumer choices and offerings. The proposed development, which has been modified and adjusted through community conversations, reflects a neighborhood, mixed-use approach - bringing increased activity to the southwestern area of Broomfield.

As noted within, the proposed development includes both market-rate and income-aligned for-sale, mid-density residential units. For-sale, mid-density units are high demand housing - as these types of units are in short supply in the community -- and represent both first-time home buyers and units for down-sizing or convenience-seeking households (including seniors and empty-nest families). The commitment to provide the income-align for-sale units on site is a positive outcome of the development.

The development includes 30,000 sqft of commercial indoor and outdoor space - which will likely be home to 5-10 businesses. The smaller neighborhood offices and retail offerings will be located on the southern portion of the development, while the north portion will include a dining/recreation business. The combination of these two business elements will increase the neighborhood offerings to nearby Broomfield and Westminster families and residents. The dining/recreation business will likely draw from a greater area (including central and western Broomfield, Superior, Westminster and beyond).

The total estimated private investment will exceed \$60M through development, building and business investment. Annual receipts are estimated to reach over \$10M annually. The businesses are anticipated to employ about 60-75 FTEs (full-time equivalents), or as many as 100-125 full-time/part-time individuals. The resident population is projected to total between 150-200 persons.

This proposed development is an in-fill project and, along with the St. John's Simm Technology Park, currently under construction, reflects the evolution of this broader area (Great Western Park) into the visioned mixed-use area within Broomfield.

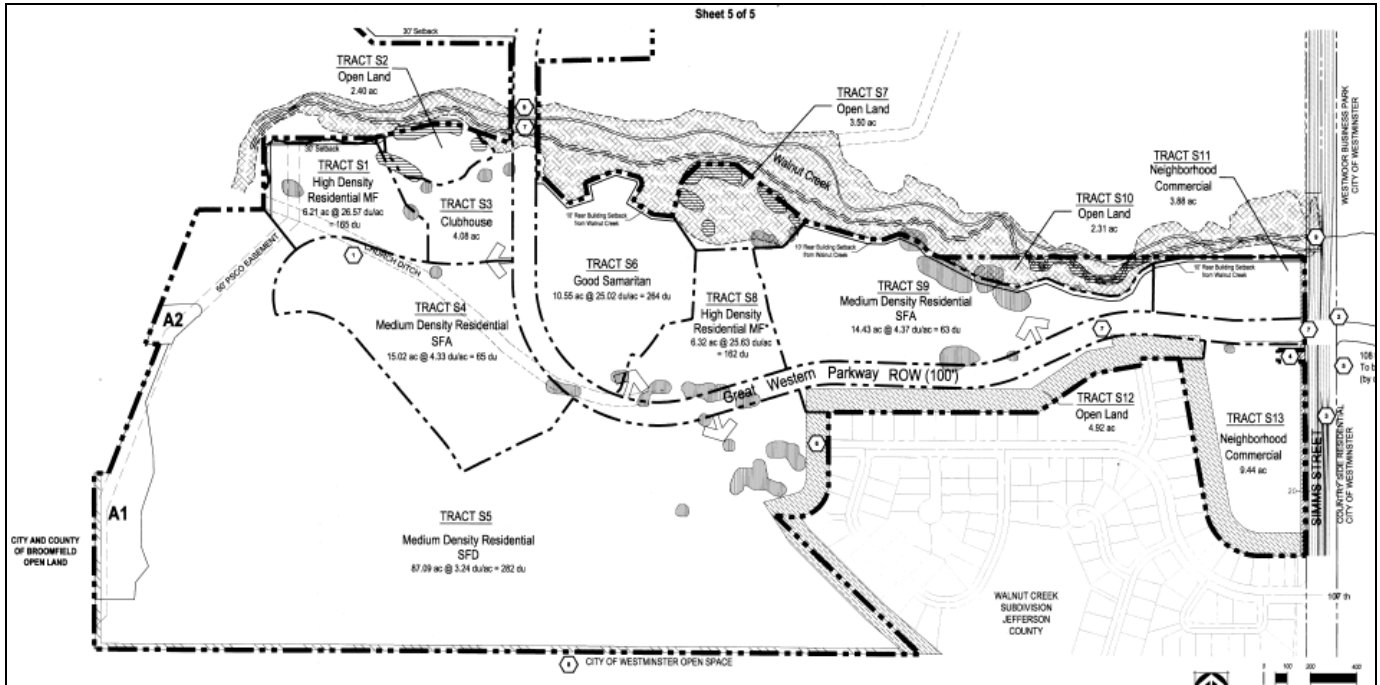
# **Zoning, Previously Approved Plans and Status of the Development**

## **Zoning and Previously Approved Plans**

The properties were annexed into Broomfield in 1988 and are zoned Planned Unit Development (PUD). The parcels are within the Great Western Park PUD Plan, approved in 2001 and amended in 2002, 2009 and 2022.

The overall Great Western Park PUD Plan includes a total of approximately 239 acres and calls for a variety of uses including residential, commercial, flex/light industrial, and open lands.

The amended PUD Plan as related to this proposal is shown below for the portion of Great Western Park located south of Walnut Creek. The subject properties are referred to as Tract S13 and Tract S11 and were intended for neighborhood commercial development.



Project Location Map from Existing Approved PUD - Parcels Shown at the Right Adjacent to Simms Street

The proposal for the southern property is not entirely consistent with the Neighborhood Commercial designation in the Great Western Park PUD as a residential component was not originally envisioned for this parcel. The subject proposal includes an amendment to the PUD plan to allow for mixed-use development on the southern property and establish land use standards for both parcels based on the current submittal.

Previous concept plans ([December 18, 2018](#) and [March 26, 2019](#)) for the property have not proceeded for formal consideration.

## Status of the Development

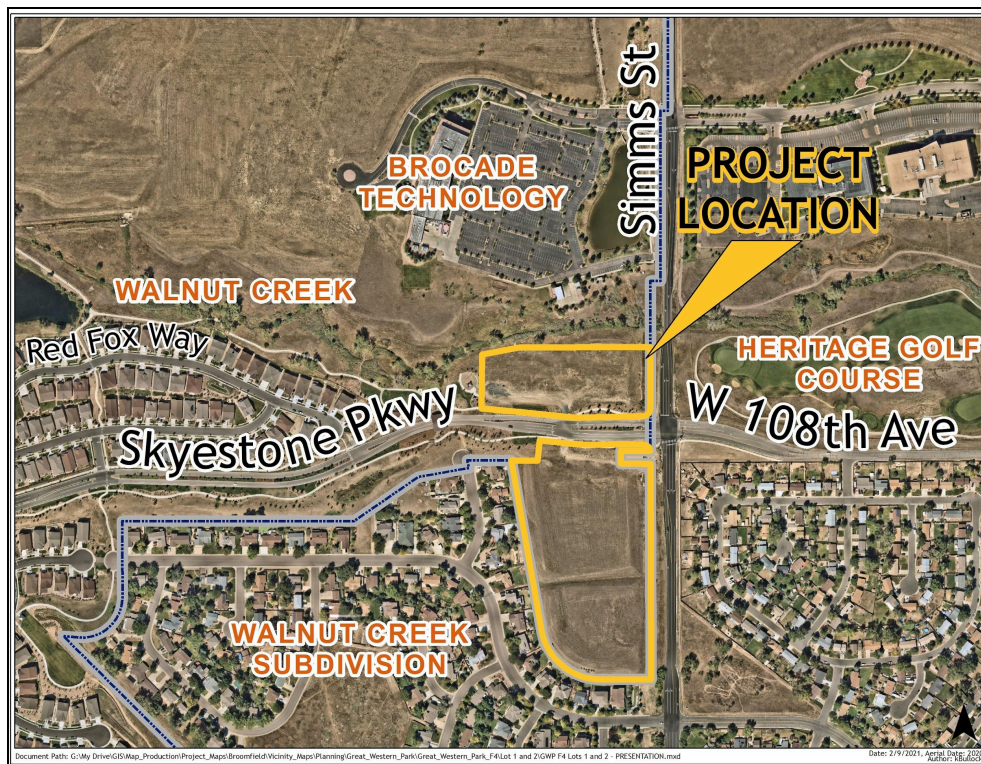
The subject properties are currently vacant but have been utilized by Taylor Morrison as a dirt storage area during the construction of the Skystone community. The grading of the properties is discussed in greater detail later in this report.

## Area Context

The subject development is at the east edge of the Skystone neighborhood along the southern border of the City and County of Broomfield. The project is adjacent to residential communities within Jefferson County and the City of Westminster to the south and east. These adjacent jurisdictions have both been included in the development review process as referral agencies.

The property to the north of the parcels has been developed as the Broadcom office use. The subject property is at the “front door” of the Skystone neighborhood located to the west, consisting of detached single-family homes, and age-restricted to those over 55 years of age. The Skystone Community is zoned PUD and is located within the Great Western Park PUD plan area. Currently, the closest neighborhood service commercial is slightly less than three miles (five minutes driving distance) away at Wadsworth Pkwy and West 100th Ave.

In 2022, the Simms Technology Park proposal was approved for the area to the north of Walnut Creek and north and west of the Broadcom office. This development includes five single-story office buildings, two four-story class “A” office buildings, six flex R&D buildings, one retail building and three pad sites intended for future development. The Simms Technology Park development is also zoned PUD and located within the Great Western Park PUD plan area. The technology park is responsible for the construction of a pedestrian trail along the north side of Walnut Creek and a bridge connecting the north and south trail corridors.



Project Location Map

## Current Application - Detailed Description and Staff Review

### Description

The subject proposal is for a PUD Amendment, Final Plat, Site Development Plan and Comprehensive Plan amendment for two parcels within the Great Western Park PUD Plan area. The properties are located at the northwest corner and southwest corner of Skystone Pkwy and Simms St and total approximately 13.3 acres. The northern parcel will be developed into a restaurant and recreation facility titled “Pickle Brew Skee”. The restaurant building will be two stories and a total of 18,755 square feet while the outdoor portion of the property will feature a courtyard with lawn games and twelve pickleball courts.

The southern property will be a mixed-use development with both residential and commercial uses. This site will feature four mixed-use buildings with ground-floor commercial and for-sale condominium units on the second and third floors. A variety of uses are permitted within the commercial spaces including offices, restaurants and retail shops. There will additionally be 14 attached condominium buildings, each with five units, along the western and southern property lines. A 50’ building buffer from the adjacent residences within Jefferson County has been provided. The proposed buffer is proposed to be reduced from the PUD Plan requirement and is addressed in greater detail below.

## Land Use Summary

The following is a composite land use summary table for the proposed development.

VILLAGE OF WEST VIEW COMPOSITE LAND USE SUMMARY		
	Approximate Acreage of Site Coverage	
Land Use Coverage	Northern Lot	Southern Lot
Open Area	1.83 Acres / 47%	4.84 Acres / 51%
Building Coverage	.63 Acres / 16%	2.00 Acres / 21%
Parking / Drive Coverage	1.42 Acres / 37%	2.60 Acres / 27%
<b>Total</b>	<b>3.88 Acres / 100%</b>	<b>9.44 Acres / 100%</b>

## Site Layout

The subject proposal is for a mixed-use development proposal located on two properties; one at the northwest corner of Skyestone Pkwy and Simms St and the other at the southwest corner. The two parcels of land total 13.3 acres in size.



*Site Plan - North is to Left*

The northern property will feature a restaurant/event space with an outdoor courtyard with additional seating and lawn games. The site will include a total of 12 pickleball courts including indoor courts, outdoor covered courts, and outdoor uncovered courts for a variety of play experiences.

The southern property will be mixed-use and include both commercial and residential uses. The residential uses will be in the form of 70 attached condo units along the western and southern border distributed within 14 buildings with 5 units per building, as well as 8 condo style units above the commercial buildings. The site features 14 one-bedroom units, 46 two-bedroom units and 18 three-bedroom units.

The commercial buildings will be located centrally and to the eastern portion of the site in front of Simms Street and Skyestone Parkway. These commercial tenant spaces are intended to provide retail, office and restaurant uses. One of the spaces is intended to be a quick service restaurant with a drive-through. Additional drive-through uses are not permitted on the property as discussed in the PUD plan.

## **Planned Unit Development Plan Amendment**

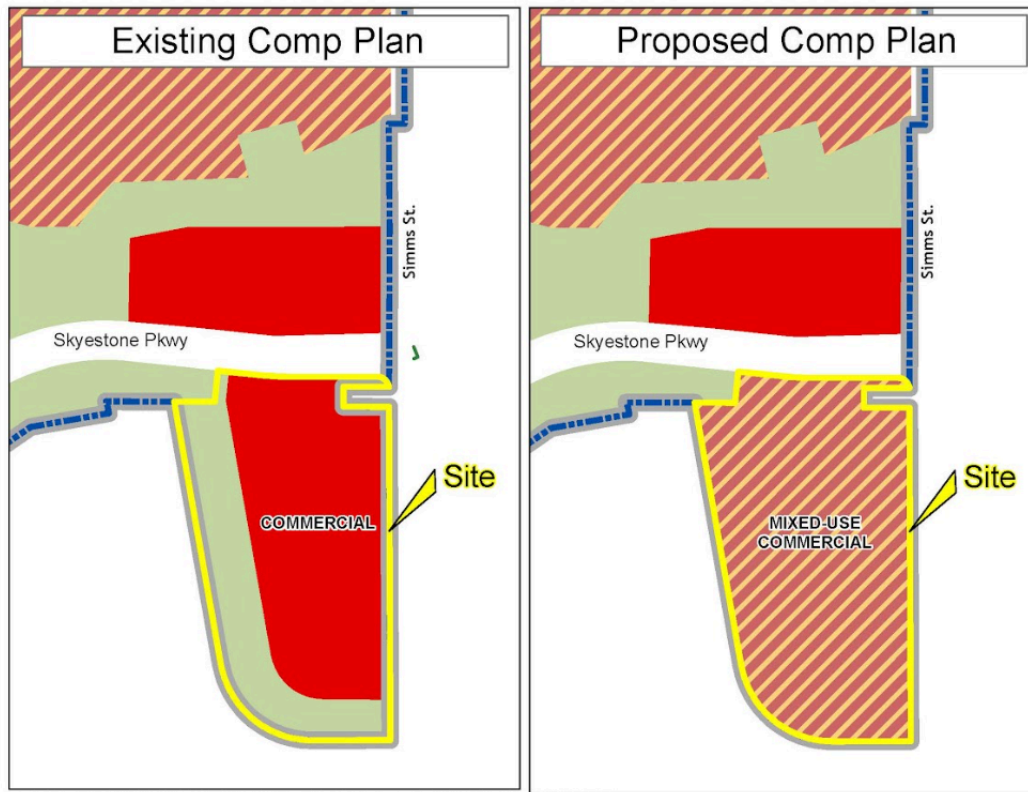
The development proposal includes an amendment to the Great Western Park PUD Plan. The proposed PUD Plan Amendment seeks to permit a mixed-use development on the southern parcel and establish land use requirements for the site such as setbacks, architectural standards, permitted uses, public land dedication calculations and inclusionary housing requirements. The PUD amendment also proposes to reduce the previously approved buffer area from 100' to 50' and remove the requirement for a berm.

## **Final Plat**

The application includes a final plat which has been provided to establish new utility, drainage and public access easements as needed to support the development proposal.

## Comprehensive Plan Amendment

As previously discussed, the applicant's proposal to construct residential dwelling units and reduce the 100' open lands buffer area on the west and south property line within the southern lot is not consistent with the current Comprehensive Plan land use map designation for the southern parcel. The applicant is proposing to amend the Comprehensive Plan land use designation for the southern lot from "open lands" and "commercial" to "mixed use commercial". Mixed Use Commercial allows for both commercial and residential uses within a parcel if approved through the PUD process. This application includes a PUD plan amendment. The northern property is designated "commercial" and the proposed restaurant space with private recreation facilities is consistent with that request. The map below shows a side-by-side view of the existing and proposed land use designations for the southern lot.



Comprehensive Plan Amendment Comparison

## Income-Aligned Housing

Broomfield Municipal Code requires new residential developments to provide income-aligned housing support or units as part of their projects. The code encourages the construction of on-site deed restricted units, but provides an option for satisfying this requirement through a cash-in-lieu payment. The applicant's PUD Plan Amendment and Site Development Plan outline the applicant's income-aligned housing proposal. The project will include a total of nine affordable units, which is the required twelve percent (12%) of the total 78 units. These income-restricted units will be provided on-site at 90% AMI, through a period of thirty (30) years. Five of these units will be one-bedroom and four units will be two-bedroom. This proposal is consistent with the Broomfield Municipal Code requirements.

A Memorandum of Understanding with requirements and procedures for for-sale inclusionary housing has been signed by the applicant and is discussed later in this staff report. The applicant has reviewed the covenant outlining the commitment to providing the income-aligned units for 30 years. This covenant will be

signed by the future homeowners at the point of sale. Additionally, the development team plans to affirmatively market the units, both income-restricted and market-rate units, to Broomfield residents and employees - within the allowable approaches under Fair Housing law.

## Sustainability

The applicant will be incorporating a number of sustainable initiatives in the subject proposal including low water landscaping, electric vehicle parking, Energy Star appliances and smart thermostats within units. The sites will also be accessible through trails and sidewalks so area residents and employees can opt to walk or bicycle to the property instead of driving if desired.

## School Impacts

The proposed development is located within the Jefferson County school district and is served by Lukas Elementary, Wayne Carle Middle and Standley Lake High School. The school district has reviewed the request and determined that the three schools that will serve this development have enough capacity for any future students generated by the proposal. All three schools are generally located north and east of Stanley Lake.

## Vehicular Access, Circulation, and Parking

The northern property will feature two full movement access points onto Skystone Pkwy allowing visitors to easily access the site and exit back onto Simms St. The southern property will feature one full movement access off Skystone Pkwy and one right-in /right-out access onto Skystone Pkwy. Both sites will feature an internal drive. The city traffic engineering and North Metro Fire Rescue have reviewed and approved the proposed site access and circulation for both parcels.

The applicant will be contributing a cash-in-lieu fee toward the future build-out of Simms St, including the widening of Simms St. to add an additional through lane, which will be a coordinated capital improvement effort between the City and County of Broomfield and the City of Westminster. The applicant will be responsible for constructing adjacent sidewalks and street lights along Simms St concurrent with this development. The cash-in-lieu will be collected by Broomfield and distributed to Westminster per the terms proposed in the IGA between CCOB and Westminster and is addressed below. Simms St. adjacent to the project is located within Westminster, so it is Westminster's responsibility to complete the future widening project and coordinate with Broomfield. North of the property, the Walnut Creek box culvert will need to be extended to accommodate future widening of Simms St. These improvements will be a coordinated capital improvement effort between Broomfield and Westminster and the terms of that project will be considered in a future IGA between both parties.

Parking will be provided in the form of surface parking spaces as well as attached and detached garage spaces intended to serve the residential units. A parking variance has been included to allow custom parking standards for commercial uses. The commercial uses at the site are not entirely consistent with what is outlined in the municipal code as the northern site includes a restaurant with game areas and event rooms and the southern parcel features vacant tenant spaces. A ratio of 6.8 spaces /1000 sq sf has been established for commercial uses within the project area as compared to the Broomfield Municipal Code which requires 10 spaces / 1000 sq ft for restaurant uses, 3 spaces / 1000 sq ft for retail, and 6 spaces / 1000 sq ft for fast casual restaurants.

The provided parking totals are consistent with a parking study completed by the applicant. The two properties will allow for cross parking and the parking totals have been outlined in the table below. The overage of parking provided within the southern parcel shall be utilized to balance the deficit of parking in the northern parcel.

<b>PARKING SUMMARY</b>	<b>REQUIRED PARKING</b>	<b>PROVIDED PARKING</b>	<b>PARKING ANALYSIS</b> <ul style="list-style-type: none"> <li>• RESIDENTIAL PARKING IS PER THE BOOMFIELD MUNICIPAL CODE</li> <li>• NON-RESIDENTIAL PARKING IS BASED ON 6.8 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA</li> </ul>
<b>LOT 1 – NORTHERN LOT</b>	179 SPACES	116 SPACES	
<b>LOT 2 – SOUTHERN LOT</b>	218 SPACES	283 SPACES	
<b>TOTAL</b>	<b>397 SPACES</b>	<b>399 SPACES</b>	

*Parking Totals*

The parking variance will also permit the applicant to provide six drive-through queue spaces rather than eight as required in the municipal code for the proposed drive-up window within commercial building A. Two short-term waiting spaces have been identified for staff to direct drive-through guests to if needed in lieu of providing two additional queue spaces. The overall parking proposal and variances have been reviewed by the City Traffic Engineer and Transportation Planner with no concerns identified.

In addition to the above-described parking, the plans provide 10 designated parking spaces for Skyestone Park and adjacent trail corridor within the northern lot. Electric vehicle parking has been provided consistent with the requirements established in the building code.

The applicant has identified that construction parking and temporary guest parking for the restaurant / recreational use will be provided on the southern property. This will be further reviewed through an administrative modification during the construction document review.

### Transit Access and Walkability

The site is located within the Regional Transportation District (RTD). The closest bus route is Route 76 on Wadsworth Boulevard (approximately two miles away) which connects southwest Denver to the US 36 and Broomfield RTD Park and Ride Station in Arista. From this station, connection routes serving Boulder, central Denver and Denver International Airport are available. The subject properties are within the Interlocken/Westmoor Call-n-Ride service which would provide pickup service and connection to either the US 36 and Flatiron Station or the US 36 and Broomfield Station.

Pedestrian access is provided from existing sidewalks along Skyestone Pkwy which connect the Skyestone Community to Simms St. Internal walkway systems have been included to provide access throughout the two parcels and a crosswalk with a median refuge has been provided across Skyestone to promote safe crossing between the two properties. The developer will be responsible for installing a 14’ sidewalk adjacent to Simms St at the time of construction.

Bicycle parking has been provided throughout the subject properties consistent with the Broomfield Municipal Code including a long-term parking space for each residence as well as 48 temporary spaces.

### Architecture

The proposed PUD amendment includes a request to amend the previously established 38’ maximum building height within both parcels. The northern property will permit a building height of up to 40’ to allow for an architecturally enhanced roofline (see rendering below). The southern parcel will permit a building height of up to 42’ for the commercial buildings only. The residential buildings located along the western property line will adhere to the existing 38’ maximum height.



The restaurant facility on the northern property utilizes a variety of building materials including brick, corrugated metal, board form concrete and large expanses of windows. The building will feature blue accent colors and modern geometric architecture. The northern site will include an outdoor courtyard with additional seating and lawn games as well as outdoor covered pickleball courts, covered pickleball courts and enclosed pickleball courts. This variety of court offerings will allow the operations to continue year round.



*Rendering of Pickleball / Restaurant Facility on Northern Parcel*

The southern property features 14 townhome style residential buildings along the western edge of the site as well as four mixed-use buildings located northeast on the property. These townhome style buildings will be a maximum height of 38 feet with modern architecture. Exterior finishes include a neutral color stucco, brick veneer and cementitious siding. The mixed-use buildings will also utilize a modern design style and these buildings will continue to use the neutral color palette and building materials to provide consistency throughout the site. The applicant has provided renderings of these buildings which are shown below.



*Rendering of Condo Units on Southern Parcel*



*Rendering of Mixed-Use Buildings on Southern Parcel*

## Public Land Dedication (PLD)

Broomfield Open Space, Parks, Recreation and Trails (OSPRT) Plan outlines the recommended public land dedication (PLD) requirements for new residential projects. The subject proposal is located within the Great Western Park subdivision, which includes the Skyestone Community, the commercial properties to the north of Walnut Creek and two creek corridors. Currently, a total of 43 acres of public lands have been dedicated through the Great Western Park subdivision platting and replatting process. Based on the number of residential units within the Skyestone community, a total obligation of 28.8 acres has been met through the dedicated lands, resulting in a PLD overage of 14.2 acres.

The proposal has included a request to apply the existing overage of public land dedication to cover the current PLD requirement which is not uncommon within a subdivision. The subject proposal includes a total of 78 residential units with 14 units being one-bedroom and 64 units being two to three bedroom units. For the purpose of calculating the total number of residents, the apartment ratio of 1.91 residents/unit was applied to the one-bedrooms and the townhome ratio of 2.5 residents/unit was applied to the two and three-bedrooms. The anticipated population of 160 residents results in a total requirement of 4.49 acres of PLD. The applicant has provided a PLD table as shown below outlining the requirements for this proposal and how the dedication is proposed to be met.

<b>PUBLIC LAND DEDICATION</b>		
<b>OBLIGATION FORMULA: (BASED ON 24 ACRES PER 1,000 RESIDENTS)</b>	<b>METHODOLOGY</b>	<b>PLD PROVIDED</b>
14 -1-BEDROOM CONDOS X 1.91 = 27 RESIDENTS	EXISTING PUBLIC LAND DEDICATION IN GREAT WESTERN PARK PUD AREA = 43 ACRES	<u>DEDICATION</u> N/A
64 - 2 AND 3 BEDROOM CONDOS X 2.5 = 160 RESIDENTS	PLD REQUIREMENTS BASED ON EXISTING UNITS = 28.8 ACRES	<u>CASH-IN-LIEU PAYMENT</u> N/A
187 TOTAL RESIDENTS X 24 ACRES/1000 = 4.49 ACRES	TOTAL OVERAGE = 14.2 ACRES  14.2 ACRES – 4.49 ACRES OBLIGATION = 9.71 REMAINING EXCESS ACRES	NO DEDICATION OR PAYMENT REQUIRED DUE TO OVERAGE OF EXISTING DEDICATION

*Public Land Dedication Table*

## Landscaping, Amenities and Adjacent Park

The planting material utilized at the site will be low water usage and has been reviewed by the city landscape architect for compliance with the Broomfield Municipal Code. The landscape plan for the development includes a variety of deciduous trees, ornamental trees, evergreens, shrubs and ornamental grasses. Planting material has been intentionally incorporated along the western property line of the southern parcel to provide additional screening to the adjacent residences. The southern parcel includes a pocket park lawn area interior to the site with covered seating to serve residents and visitors of the site. All landscape areas and common spaces will be owned by the property owners association and maintained by the association or selected management company.

The northern parcel is located directly adjacent to the existing public park within the Skyestone development. Currently, the pedestrian access and a portion of the landscaping associated with this park are located within the privately owned parcel. The project includes a redesign of this access and landscaping area so that the improvements associated with the park are located entirely on CCOB property. As previously discussed, the developer will be dedicating an easement and providing an additional ten parking spaces within the restaurant parking lot specifically for use by park and trail visitors. The proposal has been reviewed by Open Space staff as well as Parks, Recreation and Senior Services staff who have signed off on the park access redesign. The proposal has additionally been reviewed by the Parks, Recreation and Senior Services Advisory Committee who indicated support for the proposal.

## Emergency Services

During previous conceptual proposals for the subject property, concerns were highlighted by residents and North Metro Fire Rescue staff related to emergency response times within the area. North Metro is currently under contract for a parcel of land in the area for construction of a new fire station (North Metro Fire Station 68). Construction is expected to commence in 2025. Additionally, the Fire District anticipates setting up and staffing a temporary fire station in the area of 112th and Simms, as early as the end of this year, depending on the impending completion of some existing project roadways and infrastructure, ahead of the finished construction of Station 68. The temporary and new facility are expected to reduce emergency response times in the area.

The Broomfield Police Department (PD) has officers assigned to the district that includes the Skystone Community. Broomfield PD will continue to handle all police-related calls in Skystone on a 24-hour basis.

## Utility Services

Broomfield originally planned to provide both water and sewer service to the development on these lots. Upon field investigation by the developer's design team, it was found the site could not accommodate the proposed development's sewer due to elevation and grading constraints.

The developer will serve both lots with a privately owned and maintained sewer network that drains to a private lift station. This lift station will pump flows to the gravity sewer network in the northwest corner of the southern lot. Broomfield will not own, operate, or maintain this private system and a Declaration of Private Sanitary Sewer Improvements will be recorded against the real property to document this private system for future property owners in the area. This approach will add operational and maintenance costs for the development, which will likely be passed on to homeowners through their purchase price and/or HOA dues. This design approach and the requirement for privately funded operations and maintenance is addressed in the subdivision improvement agreement.

## Grading and Drainage

Currently, the southern parcel includes excess dirt associated with prior construction activities in the area. The applicant has been made aware of Broomfield's concerns related to the stockpiling of excess dirt. The excess fill will be removed from the site and the property will be returned to original grade prior to construction on the site. The applicant has provided a [topography comparison exhibit](#) to outline the original grades of the site (pre-fill) in comparison to the proposed finish grade elevations.

The development will provide on-site detention to manage stormwater runoff from the site. The developer will construct an underground detention pond on the northern lot and a typical detention pond and outlet structure on the southern lot to ensure post-development flow is released at a rate equal to or less than the current runoff from the site. Both lots will provide water quality facilities that meet the treatment requirements set forth in Broomfield's MS4 (municipal separate storm sewer system) permit.

## Airport Proximity

The subject properties are located within the airport influence area and under the flightpath of planes entering and leaving the Rocky Mountain Metropolitan Airport. An avigation easement was previously recorded for the subject properties which will be listed in any future purchasers' title work. The applicant also intends on providing a disclosure regarding airport noise in closing documents. The applicant has also indicated that they are exploring soundproofing options for the residential construction.

## Variances

A parking variance has been included to allow custom parking standards for the commercial uses. The commercial uses at the site are not entirely consistent with what is outlined in the municipal code as the northern site includes a restaurant with game areas and event rooms and the southern parcel features vacant tenant spaces. A ratio of 6.8 spaces / 1000 sq sf has been established for commercial uses within the project area as compared to the Broomfield Municipal Code which requires 10 spaces / 1000 sq ft for restaurant uses, 3 spaces / 1000 sq ft for retail and 6 spaces / 1000 sq ft for fast casual restaurants.

The provided parking totals are consistent with a parking study completed by the applicant. The two properties will allow for cross parking and the parking totals have been outlined in the table below. The overage of parking provided within the southern parcel shall be utilized to balance the deficit of parking in the northern parcel.

<b>PARKING SUMMARY</b>	<b>REQUIRED PARKING</b>	<b>PROVIDED PARKING</b>	<b>PARKING ANALYSIS</b>
<b>LOT 1 – NORTHERN LOT</b>	179 SPACES	116 SPACES	
<b>LOT 2 – SOUTHERN LOT</b>	218 SPACES	283 SPACES	
<b>TOTAL</b>	<b>397 SPACES</b>	<b>399 SPACES</b>	

- RESIDENTIAL PARKING IS PER THE BOOMFIELD MUNICIPAL CODE
- NON-RESIDENTIAL PARKING IS BASED ON 6.8 SPACES PER 1,000 SQUARE FEET OF GROSS FLOOR AREA

*Parking Totals*

The parking variance will also permit the applicant to provide six drive-through queue spaces rather than eight as required in the municipal code for the proposed drive-up window within commercial building A. Two short-term waiting spaces have been identified for staff to direct drive-through guests to if needed in lieu of providing two additional queue spaces. The overall parking proposal and variances have been reviewed by the City Traffic Engineer and Transportation Planner with no concerns identified.

### Development Support Reimbursement Agreement

The proposed development will address a number of site conditions and development considerations, which is requiring additional investments to infrastructure and development costs. These additional development costs have resulted in limiting interest by businesses to invest in this location (as a development opportunity or for business location and operations). To encourage a community-focused, successful development a Development Support reimbursement agreement is proposed to share a portion of the sales and use tax generated from the development. The proposed reimbursement (tax sharing) agreement has three key elements. First, the CCOB real and business property tax will remain unencumbered to the development agreement and flow to the general fund and the pledged funding areas (Human Services and Broomfield Public Library) to fund the programs and services demanded by, and accessed by, the residents and others. Second, the sales and use tax revenues will be shared by the Broomfield and the developer (approximately in a ratio of 2.5:1). Third, the approach for sharing sales tax revenues is varied to provide an incentive for the developer, and its tenants, to invest and grow sales in the future.

The development support agreement will be in place for the first ten (10) years of the proposed development, and any delay in the development (or lower level of performance) will have a direct impact on the total reimbursement funds. As noted, the development support agreement has been designed to provide a positive financial benefit to both the City and County and the developer - if the developer exceeds their planned level of sales. The developer, and their tenants through the developer, are incentivized to produce and grow sales and activity at a higher rate.

The modeled outcomes from the proposed development, and the development agreement, is for an estimated \$2.6M in property tax revenues over the ten year period. The sales and use tax revenues, over ten years, is estimated to be \$5.6 to \$6.0M in revenue - with the developer receiving up to \$2.1M over the ten years.

## Intergovernmental Agreement

As previously discussed the applicant will be providing a cash-in-lieu fee for the expansion of the Simms Street roadway adjacent to the subject properties located within the City of Westminster. This cash-in-lieu fee will be paid in the amount of \$297,424.50 to the City and County of Broomfield who will hold the funds in an interest bearing account until time of construction by Westminster or within eight years, whichever comes first. The payment will then be transferred to the City of Westminster to support a future capital improvement project to improve both sides of the roadway. During the time the fee is held by Broomfield, but for a maximum of 8 years, the City is responsible for ensuring that the funds grow by 6% annually to account for construction cost increases and inflation.

The City of Westminster staff has agreed to the terms outlined within this intergovernmental agreement and will be bringing the document for consideration of approval by their City Council.

## Subdivision Improvement Agreement

The subject proposal includes a two-party subdivision improvement agreement (SIA) between the developer and the City and County of Broomfield (City). This agreement includes an itemized list of public improvements and associated cost estimates (Exhibit C) for the development. This agreement is subject to approval by the City Manager's Office following council's action on the development proposal. The special provisions of the agreement are summarized below. :

### 15.0 Special Provisions.

#### 15.1. Completion of Public and Private Improvements.

15.1.1. Public Improvements. Prior to the issuance of the first certificate of occupancy for any buildings constructed on the Property, or for a phase of the development if applicable, all Public Improvements listed in **Exhibit C** and as shown on the Site Plans and the approved construction plans shall be completed, inspected and approved for public use by the construction inspection supervisor. As provided in the Section 5.0 above, the Developer remains responsible for all maintenance of the Improvements until the Construction Acceptance into Warranty has been issued.

15.1.2. Private Improvements. Prior to the issuance of the first certificate of occupancy for any building constructed on the Property, or for a phase of the development if applicable, the Developer shall complete all private improvements listed in **Exhibit C** and shown on the Site Plans and the approved construction plans, including but not limited to sidewalks and landscaping and private lift station, unless other arrangements acceptable to the City have been made for the completion of the private improvements.

15.2. Simms Street Pedestrian Improvements. Pedestrian improvements including sidewalks, street lighting, and directional curb ramps along Simms Street as shown in the Site Development Plan shall be constructed prior to the first certificate of occupancy issued for the adjacent parcel, i.e. the sidewalk along Lot 1 must be built prior to the first certification of occupancy for Lot 1.

15.3. Simms Street Roadway Improvements. Developer agrees to pay a cash-in-lieu fee of \$297,424.50 for the future Simms Street improvements. The cash-in-lieu fee will be collected

by the City and County of Broomfield then conveyed to the City of Westminster through an intergovernmental agreement between Broomfield and Westminster relating to the Simms Street improvements (the “Westminster IGA”). The Developer acknowledges that no building permits shall be issued until full execution of the Westminster IGA by the parties relating to the Simms Street improvements and the cash-in-lieu fee has been collected by Broomfield. If the Developer determines at any point they would rather construct the necessary roadway improvements a cash-in-lieu fee will no longer be required.

- 15.4. Off-Site Stormwater Improvements. The Developer shall construct a bypass storm line to convey flow from the Walnut Creek community within Jefferson County through the Property and under Simms Street (within Westminster) north to the existing culvert under Skyestone Parkway.
  - 15.4.1. Westminster Approvals. Prior to the issuance of Engineering Construction Permits by the City, the Developer will provide to the City all applicable approvals and permits from the City of Westminster related to the design and construction of the storm and grading improvements within Simms Street under their jurisdiction. All proposed work within Westminster’s jurisdiction shall be reviewed, approved, and permitted by Westminster, as required by Westminster.
  - 15.4.2. Regional Stormwater Improvements. Prior to issuance of Engineering Construction Permits by the City, the Developer will provide all necessary analysis of the offsite regional facilities including Walnut Creek and its associated floodplain, the Skyestone Parkway Culvert, the Simms Street Culvert and the impacts to those facilities caused by the addition of the bypass storm line.
- 15.5. Skyestone Park Improvements. The Developer will complete sidewalk redirection, relocation of plantings, and addition of trail signage on adjacent City property at 11805 Skyestone Parkway as shown in Site Development Plan prior to issuance of the certificate of occupancy for Great Western Park Filing No. 7, Lot 1.
- 15.6. Parking for Trailhead and Park. The Developer agrees to maintain a minimum of ten (10) parking spaces designated for use for adjacent public park and trailhead access consistent with the Site Plans. Signage shall be installed and maintained by the Developer to identify the designated spaces.
- 15.7. Skyestone Parkway Improvements. The Developer agrees to remove a portion of existing median within Skyestone Parkway public right-of-way and add striping as shown in the Site Development Plan prior to issuance of the certificate of occupancy for Great Western Park Filing No.7, Lot 1 (10810 Skyestone Pkwy).
- 15.8. Private Lift Station. Due to constraints associated with existing utilities, the Developer shall construct a private sanitary sewer lift station. The lift station will be private due to the fact it only serves these two private lots of development. The Developer agrees this lift station will be privately owned, operated, and maintained in perpetuity. It will also only be designed to serve Great Western Park Filing 7 Lots 1 and 2. Beginning at the point of connection to the CCOB gravity sewer system (noted on the Site Plans), all upstream sanitary sewer infrastructure shall be privately owned and maintained.

- 15.8.1. Private Lift Station Site Approval. Prior to the issuance of the first Engineering Construction Permit for either lot, the Developer will provide to the City all necessary State approvals associated with the site approval of the private lift station including, but not limited to, the Engineering Design Report, the Site Location Approval letter, Approved Design Plans, and any other associated documentation required by the Colorado Department of Public Health and Environment (“CDPHE”).
- 15.8.2. Private Lift Station Construction Certification. Prior to the issuance of the first certificate of occupancy for either lot, the Developer will provide to the City the CDPHE’s end of construction certification for the private lift station. In addition, the Developer will provide to the City all documentation associated with the new private lift station including, but not limited to, applications, as-builts, operation manuals, site documentation, plans, etc.
- 15.8.3. Lift Station Ownership. Prior to issuing any Engineering Construction Permits for the Property, the Developer agrees to record in the real property records a separate declaration regarding the ownership and maintenance responsibilities of the private sanitary sewer improvements, including the private lift station.
- 15.9. Inclusionary Housing - The Developer has voluntarily agreed to provide on-site for-sale inclusionary units as an alternative to paying the fee in lieu as required by the City’s Inclusionary Housing Ordinance, BMC 17-76-010 et. seq., which on-site affordable for-sale units shall satisfy the City’s inclusionary housing requirements. The Developer shall sign and cause to be recorded a Memorandum of Understanding (MOU) for Requirements and Procedures for For-Sale Inclusionary Housing at Great Western Park Filing No.7 (Village of West View). The MOU will require the Developer to provide a minimum of twelve percent of the units at an affordable rate equivalent to 90% of the Broomfield County area median income (or lower) as identified in the Colorado Housing and Finance Authority (CHFA) Colorado Income Limits and Maximum Rents for Developments with Housing Tax Credits and CHFA Multifamily Loans for the Broomfield area, including nine (9) units throughout the Property at this rate for a minimum term of thirty (30) years. These inclusionary units shall consist of 5 one-bedroom units and 4 two bedroom units.
- 15.10. Cross Parking Agreement. A cross parking agreement for the two parcels, Lot 1 and Lot 2 of Great Western Park Filing No. 1, must be executed and recorded prior to issuance of the first certificate of occupancy for the subject properties. This agreement must discuss cross parking access, maintenance obligations, procedure for amendments and procedure for site plan changes. This agreement may not be terminated unless consented to by owners of both properties and the City and County of Broomfield.
- 15.11. Construction Parking. Construction parking and temporary parking for the Great Western Park Filing No. 7, Lot 1 (10810 Skyestone Pkwy) will be located on Great Western Park Filing No. 7, Lot 2 (10784 Skyestone Pkwy) and will be reviewed through the administrative modification process as outlined in section 17-38-230 of the Broomfield Municipal Code prior to issuance of Construction Permits.

## Memorandum of Understanding

The proposed memorandum of understanding (MOU) is between Village of West View, LLC (Owner and/or Developer) and the City and County of Broomfield (the City). The MOU includes obligations of the owner/developer and Broomfield in regard to the project as follows:



### Owner Obligation

- Will record a 30-year use restriction on the properties in perpetuity to ensure the deed restricted units are preserved for affordable for-sale housing within the mixed-use development containing no fewer than 9 affordable condominium units and associated community elements
- The Owner will commit to 12% of the Project's condominium units in the City's Affordable Housing Program
- The final project mix of affordable units by size is estimated to be five (5) one-bedroom units and four (4) two-bedroom units.
- The Owner will require eligible Buyers to have a current and valid certification from the City in order to be eligible to purchase the Property.
- The Developer shall implement an affirmative marketing plan for the Property to market the Property to eligible individuals and families, including those that live or work in the City.

### Broomfield Obligations

- Broomfield in collaboration with the Broomfield Housing Authority and other partners in the Affordable Housing Program will:
  - Provide the Developer and/or its real estate agent with referrals of individuals or families whose incomes may meet the criteria for eligibility
  - Assist the Developer in marketing the Property to individuals that live or work in the City
  - Make connections to other City or partner programs increasing opportunities for residents in the Developer's project
- The City will support the financial feasibility of the project, through the following fee waivers and tax rebates to support the affordable units.
  - 50% of the Building permit fees;
  - 50% of the Plan review fees;
  - 50% of the Service Expansion Fees (50%, which is the City's share of this fee); and
  - 50% of the Use Taxes (50% based on the use tax rate of 3.5% attributed to the general fund).

## **Neighborhood Outreach and Communication**

The City and County of Broomfield standard public notice requirements have been met for this case. These requirements include:

- Mail notices were sent to all property owners within 1,000 feet of the project boundaries a minimum of ten days in advance of the meeting.
- Sign(s) were posted on the property a minimum of ten days in advance of the meeting to advertise the public hearing.
- Publication in the newspaper (Broomfield Enterprise) more than five days before the hearing.

The developer has held a number of focus groups with neighboring property owners and a formal neighborhood meeting for the subject proposal. The applicant has provided a [summary of the neighborhood meeting](#). Public notice requirements for this neighborhood meeting are as follows:

- A sign posted on the property ten days in advance to advertise the conceptual review hearing
- Mail notice to 285 property owners within 1000 feet of the parcel boundaries

A number of residents of the Skyestone community and neighboring residential communities within Jefferson County have provided comments on the proposal through the Broomfield Voice and via direct email correspondence. These comments are included in the [correspondence folder](#) for this proposal.

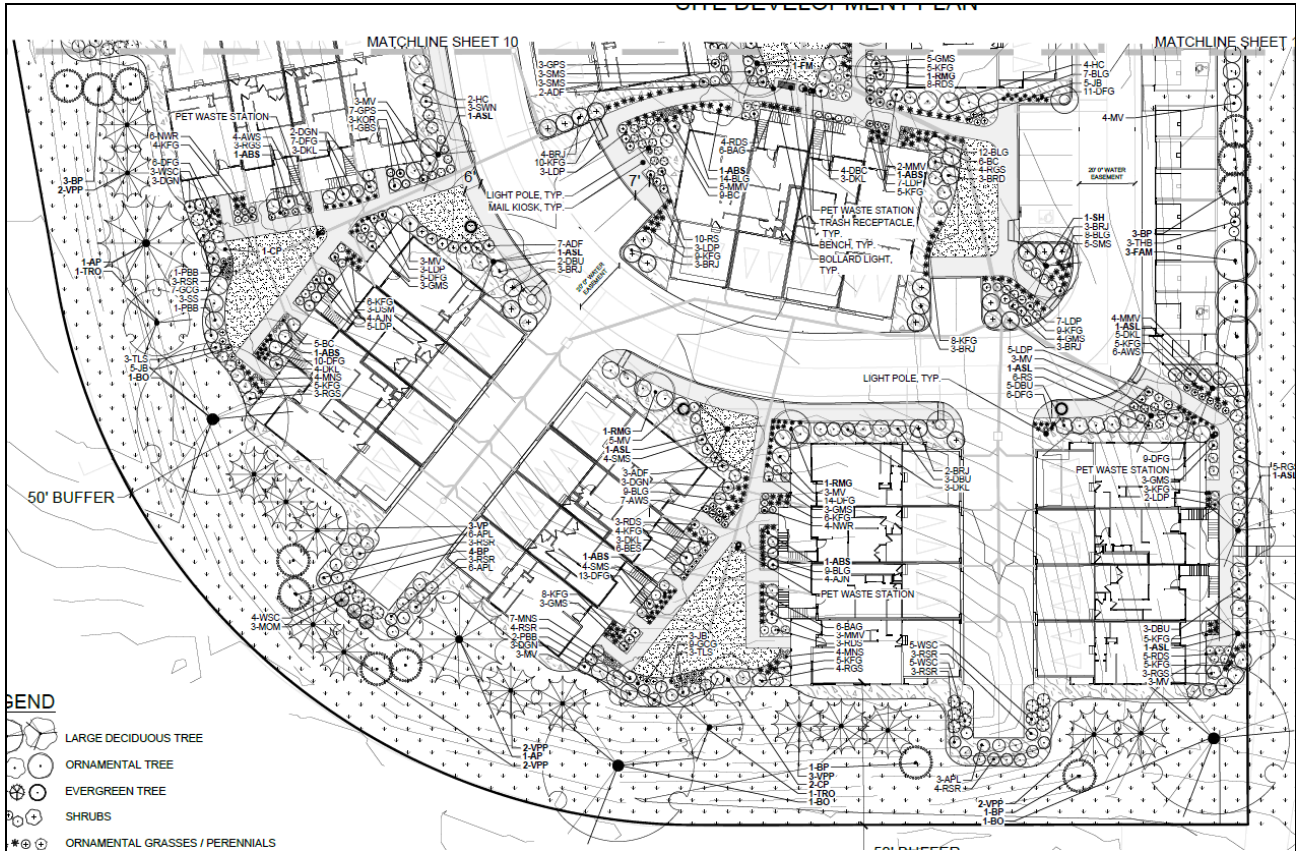
A [project website](#) was created for this development on the BroomfieldVoice platform for general information and public engagement. Staff provided general information and shared submittal documents on this page throughout the technical review process. Any public comments received by 12 Noon in advance of the hearing on November 12th will be added to the [correspondence folder](#) for this application.

## Land Use Review Commission

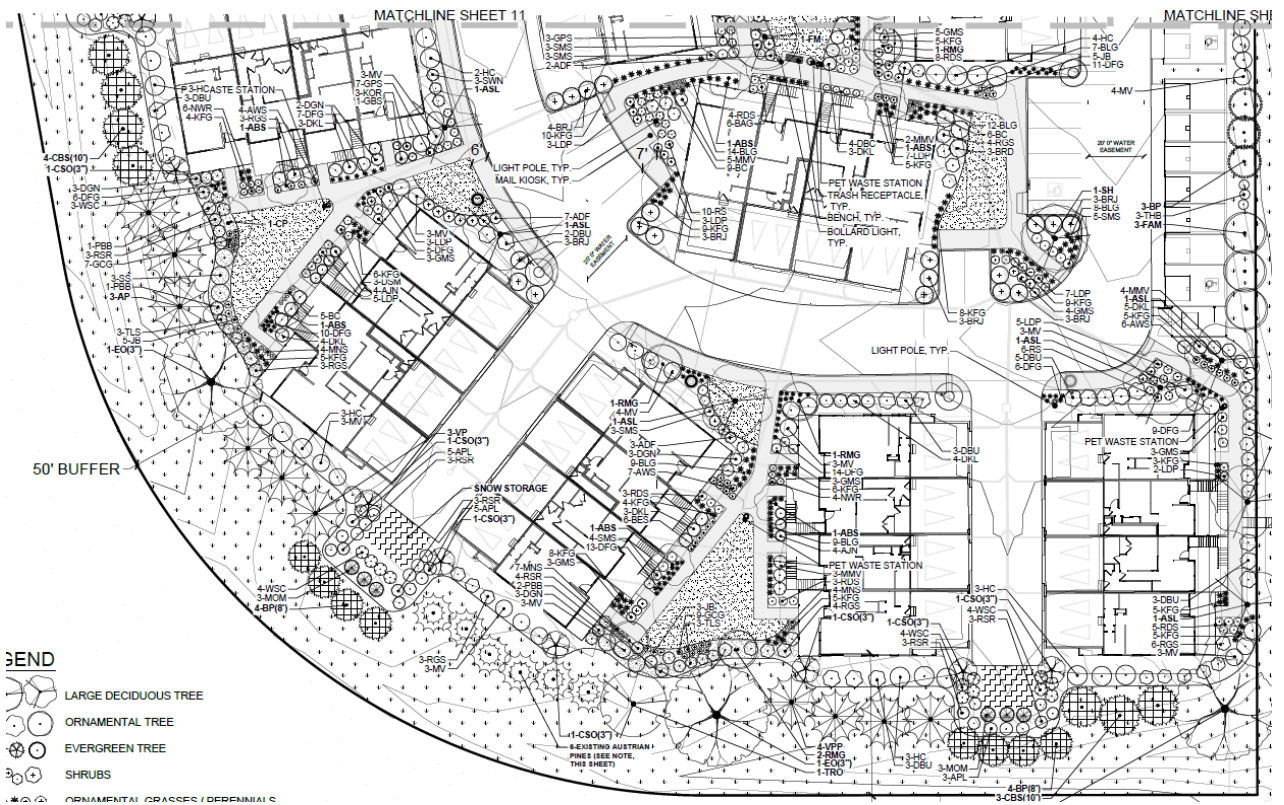
On September 9th, 2024 the Land Use Review Commission held a public hearing concerning the proposal. The commission voted unanimously to recommend approval of the subject proposal.

At the Land Use Review Commission hearing comments were heard from adjacent landowners within the City of Westminster and Jefferson County related to proposed head-in parking spaces along the western and southern property lines of the southern parcel. The applicant has revised the plans based on these identified concerns to remove the head-in parking spaces and relocate them throughout the site as well as adding significant additional landscaping throughout the entirety of the buffer area including evergreen trees, shrubs and ornamental trees. Plantings have specifically been located at the end of the access drives to the townhomes to provide screening from headlights as residents access their garages. The provided images below identify the extent the landscaping has been modified. Please note that these images are a portion of the landscape plan, focusing only on the southern property line, however, a full landscape plan for the buffer area showing the additional landscaping along the western property line is available within the site development plan linked above.

The applicant has additionally made enhancements to the pedestrian infrastructure since the LURC hearing based on staff comments including the widening of the sidewalk along Simms St to 14' and the addition of a bump out curb along Skyestone Parkway to provide traffic calming and reduce the street crossing distance for pedestrians.



Landscaping Plan (southern property line) shown at LURC with head-in parking



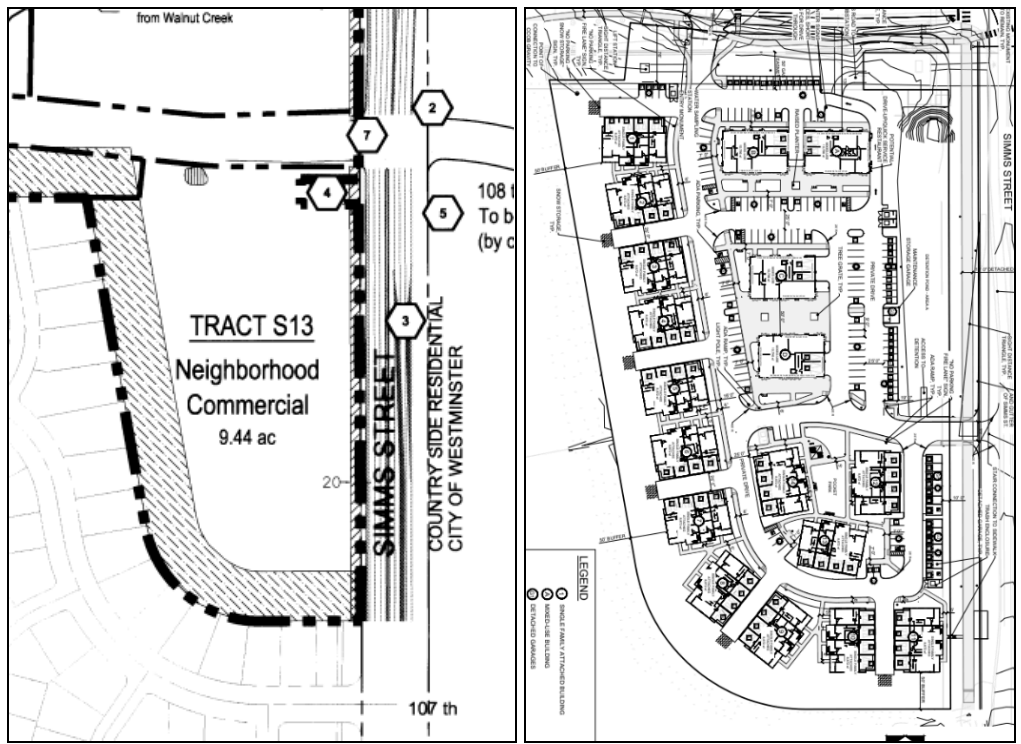
Updated landscape plan (southern property line) with parking removed and landscaping increased

# Staff Review of Key Issues

Staff has identified one key issue with the subject proposal:

Neighbor concerns related to landscape buffer - The existing approved PUD Plan for the subject property established a 100' parking and building setback area along with a 6' high berm along the western edge of the southern property to buffer the anticipated neighborhood commercial development.

The subject proposal includes a reduction to the 100' landscape buffer located along the western and southern property line of the southern parcel as outlined in the proposed PUD plan amendment. The applicant has proposed to reduce this buffer area to a width of 50', which is specified in the proposed PUD and site development plans. The reduced buffer area does not feature a berm due to drainage concerns but instead includes landscaping to provide screening from adjacent residences. The original buffer was intended to provide a transition from future commercial uses to the existing residential development in Walnut Creek. The current proposal identifies residential uses, instead of the originally anticipated commercial uses, adjacent to the buffer area. The applicant has worked with Broomfield's Landscape Architect to provide landscape screening including evergreen materials and large deciduous trees from the adjacent residences.



PUD Plan

Current Proposal



*Buffer Area with Landscape Screening (view from Southwest)*

## Applicable Municipal Code Provisions

A public hearing is required. At the conclusion of the public hearing, the City Council reviews the application based on the criteria contained in the Broomfield Municipal Code:

### Master Plan/Comprehensive Plan

The Broomfield Municipal Code permits Council to amend the comprehensive plan by resolution after a public hearing. B.M.C 17-58-030.

The Comprehensive Plan, p. 149, envisions and permits amendments, and states as follows:

To function as an effective decision-making tool, the Plan must be dynamic and flexible enough to respond to changes in economic forces, legislative action, infrastructure and development technologies and public attitudes. Therefore, an amendment procedure is necessary to keep the plan current.

Comprehensive Plan Updates and Specific Amendments may also be needed due to a private land proposal and the Comprehensive Plan states as follows:

It is also is [sic] possible that a private land use proposal could be submitted that conflicts with the Comprehensive Plan land use designation, but that is complementary to the goals, objectives and policies or simply the intent of the Plan. To ensure conformance with the Plan, an amendment would be necessary.

### Final Plat

#### 16-20-090 Review standards

The decisions of the land use review commission and the city council shall be based on whether the applicant has demonstrated that the proposed final plat meets the standards set forth in section 16-16-110, B.M.C., and is generally consistent with an approved preliminary plat, if there is one. No final plat will be approved until such maps, data, surveys, analyses, studies, reports, plans, designs, documents, and other

supporting materials as may be required herein have been submitted and reviewed, and found to meet the planning, engineering, and surveying requirements of the city; provided, however, that the city engineer may waive any final plat requirement for good cause shown.

**16-16-110 Review standards.**

The recommendation of the land use review commission and the decision of the city council shall be based on whether the applicant has demonstrated that the proposed preliminary plat meets the following standards:

- (A) The project should not create, or should mitigate to the extent possible, negative impacts on the surrounding property.
- (B) The project should provide desirable settings for buildings, make use of natural contours, protect the view, and afford privacy and protection from noise and traffic for residents and the public.
- (C) The project should preserve natural features of the site to the extent possible.
- (D) The proposed traffic flow and street locations should be consistent with the city's master plan, should be in accordance with good engineering practice, and should provide for safe and convenient movement.
- (E) The lots and tracts should be laid out to allow efficient use of the property to be platted.
- (F) The proposed public facilities and services should be adequate, consistent with the city's utility planning, and capable of being provided in a timely and efficient manner.
- (G) The proposal should comply with the design standards of chapter 16-28, the improvement requirements of chapter 16-32, and the standards and specifications of chapter 14-04.
- (H) The proposal should be consistent with the need to minimize flood damage.
- (I) The proposal should have public utilities and facilities, such as sewer, gas, electrical, and water systems, located and designed to minimize flood damage.
- (J) The proposal should have adequate drainage provided to reduce exposure to flood damage.

## **PUD Plan**

**17-38-120 - PUD plan; review standards.**

The recommendation of the land use review commission and the decision of the city council shall be based on whether the applicant has demonstrated that the proposed PUD plan meets the following standards:

- (A) The proposal should be consistent with the intent of this chapter as set forth in section 17-38-010.
- (B) The proposal should be consistent with the master plan.
- (C) The proposal should identify and mitigate potential negative impacts on nearby properties, other areas of the city, and the city as a whole.
- (D) The proposal should identify and maximize potential positive impacts on nearby properties, other areas of the city, and the city as a whole.
- (E) The proposal should include adequate facilities for pedestrians, bicyclists, and motorists.
- (F) The proposal should include adequate public improvements (both on and off site) to be provided in a timely fashion.
- (G) The proposal should optimize conservation of energy, water, and other resources on a broad scale.
- (H) The land uses within the plan should be compatible with one another and with nearby properties.
- (I) The proposal should provide for open space at a rate of not less than 40% of the developable site in residential areas and 25% in other areas as provided in section 17-38-240 below.
- (J) The proposal should adequately provide for an organization for ownership and maintenance of any common areas.
- (K) The proposal should justify any proposed deviations from the Broomfield Municipal Code in terms of the overall quality of the plan.

**17-38-130 - PUD plan; modification.**

Any modification to an approved PUD plan requires the same review by the land use review commission and the city council as the original PUD plan.

## **Site Development Plans and Site Development Plan Amendments**

**17-38-220 - Review standards.**

The decisions of the land use review commission and the city council shall be based on whether the applicant has demonstrated that the proposed site development plan meets the following standards:

- (A) The proposal should be consistent with the intent of this chapter as set forth in section 17-38-010.
- (B) The proposal should identify and mitigate potential negative impacts on nearby properties.
- (C) The proposal should identify and maximize potential positive impacts on nearby properties.
- (D) The proposal should include adequate facilities for pedestrians, bicyclists, and motorists.
- (E) The proposal should include adequate public improvements (both on and off site) to be provided in a timely fashion.
- (F) The proposal should optimize conservation of energy, water, and other resources on a site-specific scale.
- (G) The land uses within the plan should be compatible with one another and with nearby properties.
- (H) The proposal should provide for open area at a rate of not less than 40% of the developable site in residential areas and 25% in other areas as provided in section 17-38-240 below.
- (I) The proposal should include any common areas serving the site, and adequate provisions should be made for the ownership and maintenance of such areas.
- (J) The proposal should justify any proposed deviations from the Broomfield Municipal Code in terms of the overall quality of the plan.
- (K) The proposal should be consistent with the approved PUD plan.
- (L) For residential-use PUD plans and site development plans, the proposal should be consistent with adopted uniform standards.

# RESOLUTION NO. 2024-158

A Resolution approving the Great Western Park Planned Unit Development Plan Amendment No. 6 and Great Western Park Filing No. 7 Lots 1 and 2 (Village of West View) Final Plat, Site Development Plan and Comprehensive Plan Amendment

## Recitals

Whereas, the owner, Taylor Morrison of Colorado, Inc., and applicant, Village of West View, LLC, submitted a development review application for a Planned Unit Development (PUD) plan amendment, final plat, site development plan and comprehensive plan amendment for a new mixed-use development.

Whereas, a public hearing was heard by the Land Use Review Commission on September 9, 2024, at which time the Land Use Review Commission by formal resolution recommended approval of the planned unit development plan amendment, final plat and site development plan.

Whereas, after proper notice was given in accordance with Chapter 17-52 of the Broomfield Municipal Code, a public hearing was heard by the City Council on November 12, 2024.

Now, therefore, be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1. Findings

Giving consideration to Broomfield Master Plan and the Broomfield Municipal Code, recommendations from the Land Use Review Commission, comments of public officials and agencies, and testimony and written comments of all interested parties, the City Council finds as follows:

- A. That proper posting and public notice was provided as required by law for the hearing before City Council and the case file is hereby incorporated into the record.
- B. That the hearing before the City Council was extensive and complete, that all pertinent facts, matters, and issues were submitted and that all interested parties were heard at this hearing.

Comprehensive Plan Findings:

- C. The proposed revisions to the Comprehensive Plan and accompanying maps as set forth in Exhibit A are necessary to reflect the general purpose and guiding plan and recommendations for development in this area.

PUD and SDP Findings:

- D. The proposal is consistent with the intent of the Planned Unit Development chapter as set forth in Section 17-38-010 of the Broomfield Municipal Code.



- E. The proposal is in general conformance with the master plan upon approval by City Council of the proposed comprehensive plan amendment.
- F. The proposal mitigates potential negative impacts on nearby properties, other areas of the city, and the city as a whole.
- G. The proposal maximizes potential positive impacts on nearby properties, other areas of the city, and the city as a whole.
- H. The proposal contains adequate facilities for pedestrians, bicyclists, and motorists.
- I. The proposal contains adequate public improvements (both on and off-site) to be provided in a timely fashion.
- J. The proposal optimizes conservation of energy, water, and other resources on a site-specific scale and on a broad scale.
- K. The land uses within the proposal are compatible with one another and with nearby properties.
- L. The proposal provides for open area at a rate of not less than 40% of the developable site in residential areas and 25% in other areas as provided in section 17-38-240 of the Broomfield Municipal Code, and consistent with the Open Space, Parks, Recreation and Trails Plan.
- M. To the extent the proposal includes any common areas serving the site, adequate provisions are made for the ownership and maintenance of such areas.
- N. The proposal has included a deviation from the Broomfield Municipal Code to allow for custom parking ratios to be established within the community. This request is reasonable for the proposal due to the unique restaurant/event space and undetermined commercial buildings.
- O. The proposal is consistent with the approved PUD plan that is adopted concurrently with the Site Development Plan with the adoption of this resolution.

Additional Final Plat Findings:

- P. The proposed final plat provides desirable settings for buildings, makes use of natural contours, protects the view, and affords privacy and protection from noise and traffic for residents and the public.
- Q. The proposed final plat preserves natural features of the site to the extent possible.
- R. The proposed final plat contains traffic flow and street locations consistent with the city's master plan, which are in accordance with good engineering practice, and provide for safe and convenient movement.
- S. The proposed final plat lots and tracts are laid out to allow efficient use of the property to be platted.

- T. The proposed final plat public facilities and services are adequate, consistent with the city's utility planning, and capable of being provided in a timely and efficient manner.
- U. The proposal final plat complies with the design standards of chapter 16-28, B.M.C., the improvement requirements of chapter 16-32, B.M.C., and the standards and specifications of chapter 14-04, B.M.C.
- V. The proposed final plat is consistent with the need to minimize flood damage.
- W. The proposed final plat public utilities and facilities, such as sewer, gas, electrical, and water systems, are located and designed to minimize flood damage.
- X. The proposed final plat has adequate drainage provided to reduce exposure to flood damage.

**Section 2. Action**

On the basis of the above and pursuant to the provisions of Chapters 16-20 and 17-38 of the Broomfield Municipal Code, the Great Western Park Planned Unit Development Plan Amendment No. 6 and Great Western Park Filing No. 7 Lots 1 and 2 (Village of West View) Final Plat, Site Development Plan and Comprehensive Plan Amendment are hereby approved.

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

Approved on November 12, 2024.

The City and County of Broomfield,  
Colorado

\_\_\_\_\_

Mayor

Attest:

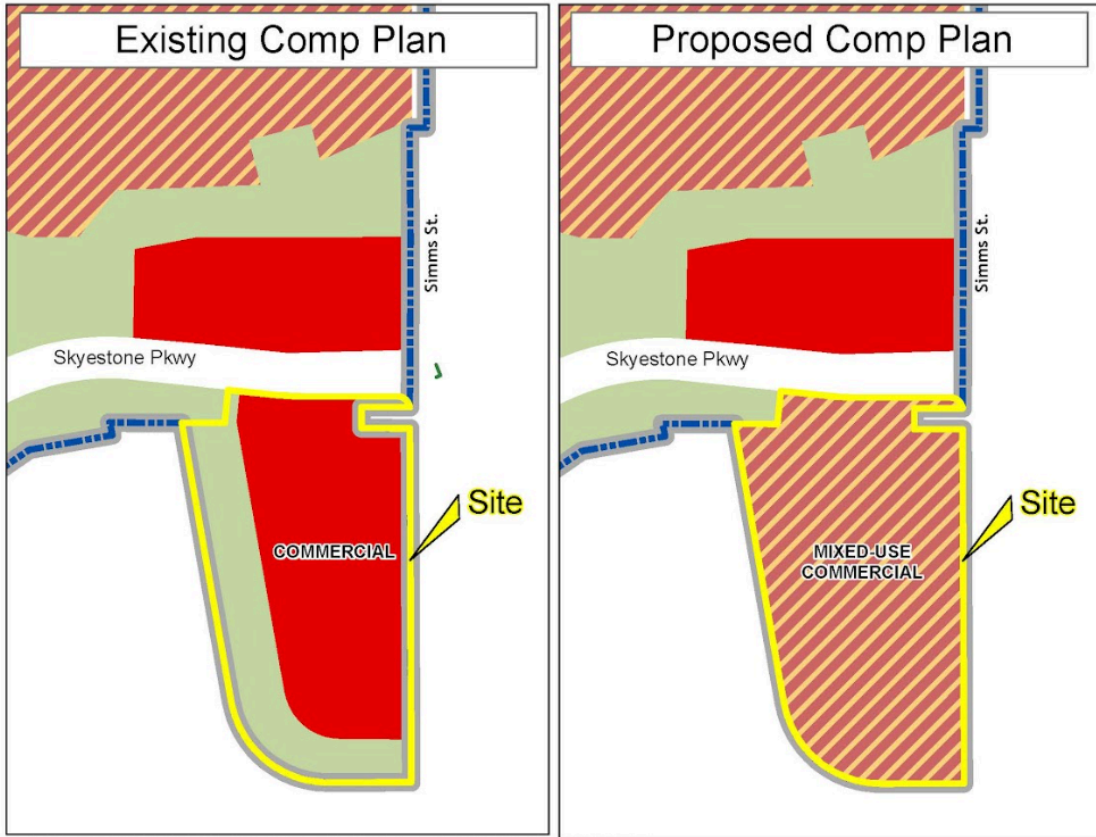
\_\_\_\_\_  
Office of the City and County Clerk

Approved As To Form:

KKH

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

# EXHIBIT A



# RESOLUTION NO. 2024-163

A Resolution approving an Intergovernmental Agreement between Broomfield and the City of Westminster relating to Village of West View Simms Street Improvement Cash-in-Lieu Payment

## Recitals

Whereas, Village of West View, LLC (the “Developer”) desires to develop a mixed-use development on two properties located at the northwest and southwestern corners of Skyestone Pkwy and Simms Street. The northern parcel is proposed to be a restaurant / event space with an outdoor courtyard with additional seating and lawn games and the southern parcel includes commercial and residential uses 70 attached condominium (condo) units along the western and southern border distributed within 14 buildings with 5 units per building, as well as 8 condo style units above the commercial buildings (collectively, the “Mixed-Use Development”); and

Whereas, the Mixed Use Development is located along the boundary of the City and County of Broomfield (“Broomfield”) and adjacent to the City of Westminster (“Westminster”);

Whereas, Westminster is the owner and jurisdiction in control of Simms Street directly adjacent to the Mixed-Use Development; and

Whereas, as part of the Mixed-Use Development, the Developer is required to make certain public improvements, including road, drainage and stormwater improvements; however, not all of the improvements are located within the City and County of Broomfield and some are along Simms Street; and

Whereas, Westminster has additional improvements in the area that will need to be completed unrelated to the development of the Mixed-Use Development which have not been designed yet and completing all of the improvements, Westminster’s improvements and the Mixed-Use Development improvements, concurrently is desirable to all Westminster, Broomfield, and the Developer; and

Whereas, on November 12, 2024, concurrent with this resolution, City Council approved Resolution No. 2024-158, which approved the Great Western Park Planned Unit Development Plan Amendment No. 6, and Great Western Park Filing No. 7, Lots 1 and 2 (Village of West View) Final Plat and Site Development Plan and a Comprehensive Plan Amendment to allow the development of the Mixed-Use Development; and

Whereas, Westminster and Broomfield desire to enter into an intergovernmental agreement relating to the deposit of the funds for the public improvements along Simms Street as set forth herein.

Now, therefore, be it resolved by the City Council of the City and County of Broomfield, Colorado:

## Section 1. IGA Terms

An intergovernmental agreement between Broomfield and the City of Westminster, Colorado, is hereby approved with the following terms:

- A. The parties will agree upon the cost of the improvements required by paid if the improvements were constructed today.
- B. The cash-in-lieu payment will be deposited by the Developer with Broomfield prior to issuance of building permits for the Mixed-Use Development (the “Initial Cash-in-Lieu Payment”).
- C. Broomfield will hold the Initial Cash-in-Lieu Payment in an interest bearing account.
- D. Each year the Initial Cash-In-Lieu Payment is held by Broomfield, funds shall be added to the account such that the amount increases by 6% annually (the “Cash-in-Lieu Funds”).
- E. Broomfield shall continue to ensure that funds are added to the Cash-In-Lieu Funds at a rate of 6% annually for 8 years. At the end of year 8, Broomfield will no longer be required to add additional funds to the Cash-in-Lieu Funds. At that time, the funds shall remain in the interest bearing account and will continue to bear interest at the current rate for such account until distributed.
- F. At such time as Westminster is prepared to move forward with construction of the Simms Street improvements, Westminster shall send notice to Broomfield, and Broomfield will release the current balance of the Cash-In-Lieu Funds and Broomfield will have no other obligations for the improvements or additional payments.

## Section 2.

The City and County Manager is authorized to sign an intergovernmental agreement with terms consistent with the terms stated in Section 2 above, with such technical additions, deletion, and variations as the City and County Attorney may deem necessary and appropriate and not inconsistent with this Resolution.

## Section 3.

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

Approved on November 12, 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:

KKH

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City and County Attorney

# ORDINANCE NO. 2259

An ordinance approving a Sales and Use Tax Reimbursement Agreement for the Village of West View

## Recitals.

Whereas, Village of West View, LLC seeks to develop certain real property located at 10795 and 10803 Simms Street, in the City and County of Broomfield, State of Colorado (the “Property”).

Whereas, the proposed development provides for retail and restaurant commercial uses at the entrance to the Skyestone neighborhood and is anticipated to generate substantial new sales and use tax revenues for the City.

Whereas, the proposed development requires significant capital investment by the Developer for public infrastructure and other improvements benefiting the public.

Whereas, Chapter 3-40 of the Broomfield Municipal Code (BMC) permits, in connection with the development of property containing retail or commercial businesses which are expected to generate substantial new sales and use tax revenues, the use of a portion of city sales and use tax revenues from such businesses to assist in financing public improvements or to attract such businesses to the city.

Whereas, Section 6.4 of the City’s Charter requires that any action creating an indebtedness be approved by ordinance.

Whereas, the City wishes to reimburse Village of West View, LLC a portion of the sales and use taxes collected from the Property for certain public improvements that are necessary to develop the Property.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

The Reimbursement Agreement by and between the City and County of Broomfield and Village of West View, LLC is hereby approved.

**Section 2.**

The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk’s Office to attest the Reimbursement Agreement in a form approved by the City and County Attorney.

**Section 3.**

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on November 12, 2024, and ordered published in full.

Introduced a second time and approved on December 10, 2024, and ordered published.

Approved on December 10, 2024

The City and County of Broomfield, Colorado

\_\_\_\_\_  
Mayor

Attest:

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

Approved as to form:

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



A SALES AND USE TAX REIMBURSEMENT AGREEMENT BY AND BETWEEN  
THE CITY AND COUNTY OF BROOMFIELD AND VILLAGE OF WESTVIEW, LLC

This Sales and Use Tax Reimbursement Agreement (“Agreement”) is made and entered into as of the \_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the CITY AND COUNTY OF BROOMFIELD, a Colorado municipal corporation and county, (the “City”) and VILLAGE OF WEST VIEW, LLC (the “Developer”), collectively, the “Parties,” or individually, a “Party.”

**RECITALS**

**WHEREAS**, the Developer seeks to construct a mixed-use development on Lots 1 and 2 of Block 19 in Great Western Park Filing No. 4, located at the entrance to the Skystone residential community (the “Property”). The proposed development will feature up to 30,000 sq ft of commercial uses and activity, including a restaurant with recreation facilities and outdoor gathering spaces, and 78 condominium style residential units. The commercial space will consist of approximately 14,500 sq ft in free standing building or first-floor space in mixed-use buildings.

**WHEREAS**, the proposed development provides for the retail and restaurant commercial uses at the entrance to the Skystone neighborhood that the residents desire.

**WHEREAS**, the proposed development requires significant capital investment by the Developer for public infrastructure and other improvements benefiting the public.

**WHEREAS**, Chapter 3-40 of the Broomfield Municipal Code (BMC) permits, in connection with the development of property containing retail or commercial businesses which are expected to generate substantial new sales and use tax revenues, the use of a portion of city sales and use tax revenues from such businesses to assist in financing public improvements or to attract such businesses to the city.

**WHEREAS**, the City has determined the proposed mixed-use development serves a public purpose as the anticipated restaurant and retail businesses will generate substantial new sales and use tax revenues and extraordinary public benefits for the city.

**WHEREAS**, the Parties desire to enter into this Agreement to assist the Developer in financing certain public improvements and to attract the proposed restaurant and retail activity to the development.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties’ undertaking to perform their respective obligations, covenants and agreements pursuant to this

Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**ARTICLE 1  
GENERAL PROVISIONS**

**1.1 Recitals.** The Recitals are incorporated herein by this reference as though fully set forth in the body of this Agreement.

**1.2 Term.** This Agreement will be effective commencing on the Effective Date above and will automatically terminate on December 31, 2037 (“Term”).

**1.3 Purpose.** The purpose of this Agreement is to: (i) assist the Developer in financing certain public improvements and to attract the proposed restaurant and retail activity to the development; and (ii) further the City’s policies as generally described in, *inter alia*, Chapter 3-40 BMC in connection with the proposed development.

**1.4 Reimbursement Agreement.** This Agreement constitutes a written agreement by the City to reimburse the Developer pursuant to Sections 3.1 and 3.2 of this Agreement up to a maximum reimbursable amount of **Two Million One Hundred Thousand Dollars (\$2,100,000.00)**.

**ARTICLE 2  
OBLIGATIONS OF DEVELOPER**

**2.1 The Improvements.** The Developer desires to construct the Improvements described in the Site Development Plan for Great Western Park Filing No. 4, Block 19, Lots 1 and 2 (Village of West View) as approved by the City on November 12, 2024, or as amended (the “Improvements”).

**2.2 No Obligation to Develop.** This Agreement shall not be construed to create an implied obligation upon the Developer or any successor owners of the Property to develop any or all of the Property. The timing of any future development of the Property is at the sole discretion of the Developer or any successor owners of the Property. Developer acknowledges that any reimbursement that is owed to Developer by the City pursuant to Section 1.4 of this Agreement will terminate on December 31, 2037 and that payment of the reimbursement by the City is dependent upon the development of the Improvements on the Property. Furthermore, the Developer acknowledges that any delay in the development of the Property may result in less than 100% of the reimbursement being paid by the City.

**ARTICLE 3  
OBLIGATIONS OF THE CITY**

**3.1 Pledge of Sales Tax.** The City agrees to pay into the Special Fund as described in Section 3.4 herein a portion of the municipal sales tax revenues generated on the Property during the Term and collected by the City from a levy of three and one-half percent (3.50%) on the sale or lease of tangible personal property at retail or the furnishing of taxable services as defined in Chapter 3-04 BMC. Said reimbursement amount shall not include 0.25% that is presently allocated for open space and 0.40% presently allocated for county functions.

The portion of the municipal sales tax revenues that are pledged to the Special Fund shall be calculated as follows:

- A base rate of twenty-five percent (25%) of all sales taxes generated from a levy of three and one-half percent (3.5%) from the Property shall be paid in year 1 and in each subsequent year within the Term.
- In the event that year over year sales tax collections from the Property achieve a growth of three percent (3%) or greater, the pledged rate shall increase to twenty-nine percent (29%) for that year.
- In the event that year over year sales tax collections from the Property achieve a growth of greater than four and one-half percent (4.5%), the pledged rate shall increase to thirty-two percent (32%) for that year.

**3.2 Pledge of Use Tax.** The City agrees to pay into the Special Fund as described in Section 3.4 herein fifty percent (50%) of the revenue collected by the imposition of the City's use tax at the rate of three and one-half percent (3.5%), which percentage excludes 0.25% presently allocated for open space and 0.40% presently allocated for county functions, levied and collected on construction and building materials delivered and used in the construction of the Improvements upon the Property during the Term solely from the initial construction of the Improvements on the Property. Available pledged use tax revenue shall not include use tax generated in connection with subsequent repair, additions to, replacement of or rehabilitation of any improvements on the Property after issuance of an initial certificate for occupancy, including, without limitation, subsequent tenant improvements or other build to suit leasehold improvements.

**3.3 No Interest on the Maximum Reimbursable Amount.** No interest shall accrue on the maximum reimbursable amount set forth in Section 1.4 over the Term of this Agreement. The total amount paid by the City pursuant to this Agreement will not exceed \$2,100,000.00.

**3.4 Special Fund.** The City agrees to create a Special Fund into which the pledged sales and use tax will be deposited (the "Special Fund"). Subject to the terms and conditions set forth in this Agreement, including, without limitation Section 3.5 and Section 3.6, the City agrees to make disbursements from the Special Fund to the Developer in accordance with the

procedure set forth in Section 3.5. The Special Fund and any contributions made in accordance with Sections 3.1 and 3.2 shall be the sole and exclusive source of payment of the Reimbursement Obligation. It is the intention of the Parties that there be no double compensation paid to the Developer. If the Developer receives payment in whole or in part from any public source other than the Special Fund, the Reimbursement Obligation shall be reduced by a like amount. At all times while it is holding and maintaining the Special Fund, the City will earn interest on (and credit interest to) the Special Fund in accordance with its normal practices and procedures.

**3.5 Reimbursement Procedure.** The Reimbursement Obligation shall be promptly payable solely from: (a) the amounts in the Special Fund, and (b) any prepayment or third-party contributions made in accordance with Section 3.6, as follows:

On or before December 31<sup>st</sup> of each year during the Term, the City shall disburse by wire transfer to the account designated by the Developer all funds that have been deposited into the Special Fund (including any interest thereon) to the Developer. If the Developer fails to designate an account prior to December 31 of the applicable year, then the City shall make the annual disbursement via check to the Developer and mail said check to the address identified in Section 6.18 below.

**3.6 Pre-Payment Rights.** The City shall have the right to prepay the Reimbursement Obligation in whole or in part at any time. If the City receives a payment from a third party for all or part of the Reimbursement Obligation, the City shall cause such payment (if any) to be deposited in the Special Fund and reimbursed to the Developer in accordance with the terms of this Agreement.

**3.7 Obligations Subject to Charter and Chapter 3-40 BMC.** The obligations of the City under this Agreement are subject to the requirements of the Charter for the City and Chapter 3-40 BMC.

**3.8 Books and Accounts; Financial Statements.** During the Term, the City will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the amount of pledged revenue received by the City; the amounts deposited into and paid out from the Special Fund; and such other calculations, allocations and payments required by this Agreement. Additionally, the City shall prepare a complete financial statement on an annual basis in reasonable detail covering the above information, certified by a public accountant selected by the City, and shall furnish a copy of such statement to the Developer upon request.

**3.9 Limitation.** During the Term, the City shall not enter into any agreements or transactions that impairs the rights of Developer under this Agreement, including, without limitation, the right to receive the Reimbursement Obligation in accordance with the procedures established in this Agreement.

**ARTICLE 4  
REPRESENTATIONS AND WARRANTIES**

**4.1 Representations and Warranties by the City.** The City represents and warrants that:

(a) The City is a Colorado municipal corporation and county and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder;

(b) The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to Developer;

(c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the City or its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected;

(d) This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors rights and by equitable principles, whether considered at law or in equity. The City will defend the validity of this Agreement in the event of any litigation arising hereunder that names the City as party or which challenges the authority of the City to enter into or perform its obligations hereunder.

**ARTICLE 5  
DEFAULT AND REMEDIES**

**5.1 Events of Default.** If any Party fails in the performance of any covenant or promise in this Agreement and such failure continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party, it shall be considered an event of default. If such default is not of a type which can reasonably be cured within such 30 day period and the defaulting Party commences such cure within such 30-day period, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

**5.2 Remedies.** Upon the occurrence and continuation of any default hereunder, the non-defaulting Party's remedies shall consist of:

(a) Recovery of its actual damages as of the time of entry of judgment, plus all attorney costs and fees that the non-defaulting party expends resulting from a default under this Agreement, regardless of whether a default under this Agreement is litigated in a court of law. No Party shall be entitled to claim damages for special,

consequential and/or exemplary damages. No commissioner, official, employee, attorney or agent of the City shall be personally liable to Developer under the Agreement or in the event of any Default by the City or for any amount that may become due to Developer under the Agreement, except for fraud, conversion or intentional acts; and

(b) Any other remedy available at law, in equity or under the terms of this Agreement, including, without limitation, specific performance.

5.3 **Limitation of Liability.** The City's liability under this Agreement is limited to the maximum reimbursable amount as set forth in Section 1.4 above.

## **ARTICLE 6 MISCELLANEOUS PROVISIONS**

6.1 **Delays; Force Majeure.** Subject to the following provisions, time is of the essence. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused and an equitable extension of time for performance shall be provided to such party if such delays or failure are a result of any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, adversely affects such Party's performance of such obligation: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions or shortages; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God; disruption to local, national, or international transport services; shortages of materials or equipment, epidemics; adverse weather; any other event beyond the applicable Party's reasonable control it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Parties with respect to the terms of the Agreement, as the case may be, shall be extended for a reasonable period because of the enforced delay; provided, that the Party seeking the benefit of the provisions of this section shall, within 30 days after such Party gains actual knowledge of such enforced delay, notify the other Parties thereof in writing in the manner provided for herein of the cause or causes thereof, and claim the right to an extension for the period of the enforced delay.

6.2 **Assignment; 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. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

6.3 **Titles of Sections.** Any titles of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

**6.4 Amendment.** This Agreement may be amended only by an instrument in writing signed by the Parties.

**6.5 Waiver Of Breach.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any subsequent breach by any Party.

**6.6 Governing Law.** This Agreement shall be governed by the laws of the State of Colorado and exclusive venue for any litigation shall be the District Court of Broomfield County.

**6.7 Execution In Counterparts.** 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.

**6.8 No Third-Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities only as to 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.

**6.9 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.

**6.10 Severability.** If any provision of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be illegal, invalid or unenforceable, in whole or in part, under present or future laws effective during the Term, 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. Furthermore, to the extent it does not materially alter the rights and obligations of the Parties, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable and this Agreement shall be deemed reformed accordingly. Without limiting the generality of the foregoing, if all or any portion of the payments required by the terms of this Agreement are determined, by a court of competent jurisdiction in a final non-appealable judgment, to be contrary to public policy or otherwise precluded, the Parties shall utilize their reasonable best, good faith efforts to promptly restructure and/or amend this Agreement, or to enter into a new agreement, and to assure, to the extent legally permissible, that all payments shall be made to WRG as specified in this Agreement.

**6.11 Minor Changes.** This Agreement has been approved substantially in the form submitted to the governing bodies of the Parties. The officers executing this Agreement are

authorized to make and may have made, minor changes to this Agreement and attached exhibits as they have considered necessary. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of the Agreement shall constitute the approval of such changes by the respective Parties.

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

**6.13 Good Faith of Parties.** In the performance of this Agreement or in considering any requested approval, consent, 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.

**6.14 Parties Not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint ventures, and no Party shall be responsible for any debt or liability of any other Party.

**6.15 No Waiver of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

**6.16 Financial Obligations of the City.** All financial obligations of the City under this Agreement, are subject to appropriations, 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 Developer.

**6.17 Additional Documents or Action.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders, that is necessary to carry out this Agreement or is reasonably requested by any Party to conform or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party. If all or any portion of this Agreement, or other agreements approved in connection with Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially received the benefits that it would have received under this Agreement.



6.18 **Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if delivered 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 Parties each have designated an authorized representative as follows but may change their designated authorized representative and address by sending notice to the remaining Parties:

(a) The City designates the City and County Manager as the authorized representative of the City under this Agreement. Email address is manager@broomfield.org;

(b) Developer designates \_\_\_\_\_ as the authorized representative of the Developer under this Agreement. Email address is \_\_\_\_\_. Physical address: \_\_\_\_\_;

(d) If the Developer 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.

6.19 **Incorporation of Exhibits.** All exhibits, if any, attached to the Agreement are incorporated into and made a part of this Agreement.

6.20 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and replaces in their entirety any prior agreements, understandings, warranties or representations between the Parties on the matters specifically covered in this Agreement. This provision shall not apply to any separate, supplemental or other agreement required by BURA or the City pursuant to its rules and regulations.

6.21 **Recording.** This Agreement shall be recorded in the real property records of Broomfield County, Colorado.

[Signature Page to Follow]

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

ATTEST:

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

APPROVED AS TO FORM:

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

VILLAGE OF WEST VIEW, LLC

By: \_\_\_\_\_

Name:

Title:



**C. Public Hearing - Ordinance Approving a Reimbursement Agreement for Funds Advanced for Drainage Improvements to Nissen Channel - Second Reading**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Action Items Item: 7C.
Presented By	
Jeff Romine, Economist & Director	
Community Goals	
<input checked="" type="checkbox"/> Financial Sustainability and Resilience	

## Overview

[View Correspondence](#)

[View Presentation](#)

This proposed Broomfield ordinance authorize a Reimbursement Agreement between the Broomfield, BURA and Wasatch Residential Group, LLC (WRG) for funds advanced to Broomfield by WRG for the construction of drainage improvements to Nissen Channel downstream (east) of Perry Street and north of 120th Avenue benefiting WRG’s property located at 12010 and 12050 Perry Street (the former drive-in theater site).

Pursuant to the agreement, WRG would advance \$2.0M to Broomfield enabling Broomfield and Mile High Flood District (MHFD) to construct drainage and flood control improvements along this stretch of Nissen Channel in 2024 and 2025. A reimbursement of \$1.0M would be paid to WRG by BURA utilizing tax increment financing from any increase to property and sales/use taxes generated by the future development of the property. The property is located within the Lowell Gateway Urban Renewal Area

### **Attachments**

[City Council Memo - PH Reimbursement Agreement for Drainage Improvements to Nissen Channel 2nd Reading - 11-12-24.pdf](#)

[Ordinance 2256 Reimbursement Agreement for Drainage Improvements to Nissen Channel 2nd Reading.pdf](#)

[Reimbursement Agreement for Funds for Nissan Channel DRainage Improvments 111224 WRG Signed.pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

This proposed Broomfield ordinance authorizes a Reimbursement Agreement between the City, BURA and Wasatch Residential Group, LLC (WRG) for funds advanced to the City by WRG for the construction of drainage improvements to Nissen Channel downstream (east) of Perry Street and north of 120th Avenue benefitting WRG's property located at 12010 and 12050 Perry Street (the former drive-in theater site). Pursuant to the agreement, WRG would advance \$2.0M to the City enabling the City and Mile High Flood District (MHFD) to construct drainage and flood control improvements along the Phase 1 stretch of Nissen Channel in 2024 and 2025. Of the amount advanced, \$1.0M is the landowner and developers obligation, along with their contribution of the land through permanent and temporary easements for the Phase 1 portion of Nissan drainage improvement (valued at \$170k). A reimbursement of \$1.0M would be paid to WRG by BURA utilizing tax increment financing from any increase to property and use taxes generated by the future development of the property. The property is located within the Lowell Gateway Urban Renewal Area.

Broomfield's Charter requires any multiple-fiscal year direct or indirect debt or other financial obligation of the City to be approved by ordinance. This includes reimbursement agreements with developers, special districts and/or the Broomfield Urban Renewal Authority (BURA). BURA has approved this agreement via resolution on October 8, 2024.

Broomfield has been working with MHFD since 2016 to develop the final design, acquire right-of-way/easements, and construct drainage and flood control improvements for the Nissen Channel from approximately [Tennyson Street to the west side of Lowell Blvd](#). This area is a narrow channel and wide floodplain with multiple locations of flow spills and bank overtopping. The effective floodplain impacts businesses and overtops Perry Street during significant precipitation events. Improvements are expected to provide an adequate drainage path along Nissen Channel and reduce floodplain and flood risk to life and property. Construction will include a maintenance access path that will provide a trail connection.

MHFD will pay 50% of the drainage improvements using funds collected through the MHFD property tax mills. Broomfield will pay the remaining 50% through its Capital Improvement Program (CIP), with an amount of \$3.9M (for both phases of the project), and from contributions by developers and private property owners located along Nissen Channel.

The \$2.0M contribution from WRG enables MHFD to begin construction of the drainage and flood control improvements along this stretch of Nissen Channel in 2024. Permits have been issued and the contractor is on-site doing preliminary work. Work will begin in the near future at the downstream end.

## 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
City and County of Broomfield	\$3,300,000
Mile High Flood District	\$3,300,000
Wasatch Residential Group	\$2,000,000
*Phase 1	-\$ 6,000,000
*Projected Balance (to be forwarded to Phase 2)	\$2,600,000

## Prior Council or Other Entity Actions

Prior Council Action:

Resolution Nos. [2016-169](#) approving the original intergovernmental agreement; Resolution Nos. [2017-142](#), [2018-208](#), [2019-133](#), [2020-212](#), [2021-93](#), [2022-45](#) and [2023-53](#) are amendments to the 2016 IGA approved by City Council in their respective years. Funds for this project were approved by Council in the [2024 CIP Budget](#).

Oct. 8, 2024, Council approved Ordinance No. 2256 on first reading. Additionally, BURA approved the Reimbursement Agreement for Funds Advanced for Drainage Improvements to Nissen Channel (Resolution 2024-154-UR) on October 8, 2024.

## Proposed Actions / Recommendations

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

**That Ordinance No. 2256 be adopted on second reading and further ordered published.**

## Alternatives

Council can choose not to approve the Reimbursement Agreement and staff would then delay construction of the drainage and flood control improvements along this stretch of Nissen Channel until adequate CIP funds are available. Staff anticipates that if construction is delayed that the improvement cost will increase.

# ORDINANCE NO. 2256

An ordinance approving a Reimbursement Agreement for Funds Advanced for Drainage Improvements to Nissen Channel

## Recitals.

Whereas, Avenue 120 Holdings, LLC, a Utah limited liability company (“Avenue 120”) and Mountain West Capital Partners, LLC, a Utah limited liability company (“MWCP”, and collectively with Avenue 120, “Developers”) are affiliates of Wasatch Residential Group, LLC, a Utah limited liability company (“WRG”).

Whereas, Avenue 120 owns certain real property located at 12050 N Perry Street and MWCP owns certain real property located at 12010 N Perry Street, in the City and County of Broomfield, State of Colorado (collectively, the “Developers’ Property”).

Whereas, Developers have proposed a development for the Developers’ Property that requires improvements to Nissen Channel as the proposed development falls within the existing floodplain.

Whereas, the City owns a parcel of property which contains the Nissen Channel and is located adjacent to the Developers’ Property.

Whereas, the City together with the Mile High Flood District is undergoing a multiple-year project constructing and installing necessary regional drainage improvements along the Nissen Channel.

Whereas, the regional drainage improvements to Nissen Channel, including those adjacent to the Developers’ Property, are subject to available funding, and the timing, location, and construction year of said improvements are determined based on the funds available for any given year.

Whereas, insufficient funds are available for the City and Mile High Flood District to complete the regional drainage improvements adjacent to the Developers’ Property in 2024 and adequate funds for said improvements are not planned to be available for several years.

Whereas, WRG is willing to advance to the City Two Million and 00/100 Dollars (\$2,000,000.00) to complete the necessary improvements to Nissen Channel that are adjacent to the Developers’ Property beginning in 2024 provided that BURA reimburses WRG for up to fifty percent (50%) of the advanced funds from tax increment revenues paid to BURA from taxes generated from the development of the Developers’ Property.

Whereas, the existing conditions of the Developers' Property are such that the City and BURA previously included the Developers' Property within the Lowell Gateway Urban Renewal Plan area in order to facilitate redevelopment and eliminate conditions of blight.

Whereas, BURA has legal authority pursuant to Urban Renewal Law and the Lowell Gateway Urban Renewal Plan to transact business and exercise its powers as an urban renewal authority to facilitate redevelopment and eliminate blight within the Developers' Property, including the authority to receive and utilize tax increment revenues and, in conjunction therewith, to enter into intergovernmental agreements pursuant to, inter alia and as applicable, C.R.S. § 29-1-203.

Whereas, the City has legal authority pursuant to Sections 10 through 13 of Article XX of the Colorado constitution, Sections 14.4 and 14.5 of the City's Charter, and Chapter 3-40 of the Broomfield Municipal Code, to enter into agreements, pursuant to ordinance and without an election, to provide that all or a portion of the City's use tax revenues generated by taxable activity within specified property be used to assist in financing designated improvements and, in connection therewith, to enter into intergovernmental agreements pursuant to, inter alia and as applicable, C.R.S. § 29-1-203.

Whereas, the Developers' Property is located within the municipal boundaries and are subject to the jurisdiction of the City.

Whereas, the City and BURA wish to exercise this legal authority to reimburse WRG for up to fifty percent (50%) of the Two Million Dollars (\$2,000,000.00) advanced by WRG to finance the drainage improvements to Nissen Channel adjacent to the Developers' Property.

Whereas, the City, BURA, and Developers agree the timely construction and installation of the regional drainage improvements to Nissen Channel adjacent to and within the Developers' Property will facilitate the remediation of blight conditions within the Developers' Property and will provide for orderly and well-planned growth and promote economic development and stability within the City.

Whereas, the City, BURA, and WRG desire to enter into a Reimbursement Agreement to allow for the reimbursement of advanced funds by WRG for the timely installation of drainage improvements to Nissen Channel.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## **Section 1.**

The Reimbursement Agreement by and between the City and County of Broomfield, the Broomfield Urban Renewal Authority and Wasatch Residential Group, LLC for the



reimbursement of funds advanced for drainage improvements to Nissen Channel is hereby approved.

**Section 2.**

The Mayor or Mayor Pro Tem is authorized to sign and the City Clerk’s Office to attest the Reimbursement Agreement in a form approved by the City and County Attorney.

**Section 3.**

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on October 8, 2024, and ordered published in full.

Introduced a second time and approved on November 12, 2024, and ordered published.

Approved on November 12, 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*

---

City and County Attorney

**REIMBURSEMENT AGREEMENT FOR FUNDS ADVANCED FOR DRAINAGE  
IMPROVEMENTS TO NISSEN CHANNEL  
(Wasatch – 12010 and 12050 Perry Street)**

This Reimbursement Agreement for Funds Advanced for Drainage Improvements to Nissen Channel (this “Agreement”) is made and entered into as of the \_\_\_\_ day of \_\_\_\_\_, 2024 (“Effective Date”), by and between the CITY AND COUNTY OF BROOMFIELD, COLORADO (“City”), a Colorado home-rule municipality and county; BROOMFIELD URBAN RENEWAL AUTHORITY, a body corporate and politic of the State of Colorado (“BURA”); and WASATCH RESIDENTIAL GROUP, LLC, a Utah limited liability company (“WRG”). The parties may be collectively referred to herein as the “Parties” and individually as a “Party.”

**RECITALS**

**WHEREAS**, Avenue 120 Holdings, LLC, a Utah limited liability company (“Avenue 120”) and Mountain West Capital Partners, LLC, a Utah limited liability company (“MWCP”, and collectively with Avenue 120, “Developers”), together with any successors and assigns, are affiliates of WRG.

**WHEREAS**, Avenue 120 owns certain real property located at 12050 N Perry Street and MWCP owns certain real property located at 12010 N Perry Street, in the City and County of Broomfield, State of Colorado, as shown on **Exhibit A** attached hereto and incorporated herein (collectively, the “Developers’ Property”); and

**WHEREAS**, Developers have proposed a development for the Developers’ Property that requires improvements to Nissen Channel as the proposed development falls within the existing floodplain; and

**WHEREAS**, the City owns a parcel of property which contains the Nissen Channel and is located adjacent to the Developers’ Property; and

**WHEREAS**, the City together with the Mile High Flood District is undergoing a multiple-year project constructing and installing necessary regional drainage improvements along the Nissen Channel. The portion of the regional drainage improvements adjacent to the Developers’ Property is shown on **Exhibit B**, attached hereto and incorporated herein (the “Improvement Plan”); and

**WHEREAS**, the regional drainage improvements to Nissen Channel, including those adjacent to the Developers’ Property, are subject to available funding, and the timing, location, and construction year of said improvements are determined based on the funds available for any given year; and

**WHEREAS**, insufficient funds are available for the City and Mile High Flood District to complete the regional drainage improvements adjacent to the Developers’ Property in 2024 and adequate funds for said improvements are not planned to be available for several years; and

**WHEREAS**, WRG is willing to advance to the City Two Million and 00/100 Dollars (\$2,000,000.00) to complete the necessary improvements to Nissen Channel that are adjacent to the Developers’ Property beginning in 2024 provided that BURA reimburses WRG for up to fifty percent (50%) of the advanced funds from tax increment revenues paid to BURA from taxes generated from the development of the Developers’ Property subject to the terms and conditions of this Agreement; and

**WHEREAS**, the existing conditions of the Developers' Property are such that the City and BURA previously included the Developers' Property within the Lowell Gateway Urban Renewal Plan area in order to facilitate redevelopment and eliminate conditions of blight; and

**WHEREAS**, BURA has legal authority pursuant to Urban Renewal Law and the Lowell Gateway Urban Renewal Plan to transact business and exercise its powers as an urban renewal authority to facilitate redevelopment and eliminate blight within the Developers' Property, including the authority to receive and utilize tax increment revenues and, in conjunction therewith, to enter into intergovernmental agreements pursuant to, *inter alia* and as applicable, C.R.S. § 29-1-203; and

**WHEREAS**, the City has legal authority pursuant to Sections 10 through 13 of Article XX of the Colorado constitution, Sections 14.4 and 14.5 of the City's Charter, and Chapter 3-40 of the Broomfield Municipal Code, to enter into agreements, pursuant to ordinance and without an election, to provide that all or a portion of the City's use tax revenues generated by taxable activity within specified property be used to assist in financing designated improvements and, in connection therewith, to enter into intergovernmental agreements pursuant to, *inter alia* and as applicable, C.R.S. § 29-1-203; and

**WHEREAS**, the Developers' Property is located within the municipal boundaries and are subject to the jurisdiction of the City; and

**WHEREAS**, the City and BURA wish to exercise this legal authority to reimburse WRG for up to fifty percent (50%) of the Two Million Dollars (\$2,000,000.00) advanced by WRG to finance the drainage improvements to Nissen Channel adjacent to the Developers' Property as set forth in this Agreement; and

**WHEREAS**, the BURA, City, and Developers agree the timely construction and installation of the regional drainage improvements described in the Improvement Plans adjacent to and within the Developers' Property will facilitate the remediation of blight conditions within the Developers' Property and will provide for orderly and well-planned growth and promote economic development and stability within the City.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals, the Parties' undertaking to perform their respective obligations, covenants and agreements pursuant to this Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

### **ARTICLE 1 GENERAL PROVISIONS**

**1.1 Recitals.** The Recitals are incorporated herein by this reference as though fully set forth in the body of this Agreement.

**1.2 Term.** This Agreement will be effective commencing on the Effective Date above and will automatically terminate on January 1, 2039 ("Term"), unless earlier terminated as provided in this Section 1.3. Early termination of the Agreement shall automatically result upon receipt by WRG of the full Reimbursement Obligation (defined below) from BURA.

**1.3 Purpose.** The purpose of this Agreement is to: (i) eliminate blight and otherwise implement and further the purposes of the Lowell Gateway Urban Renewal Project as described in the plan; (ii) facilitate the future redevelopment of the Developers' Property by ensuring the timely construction of drainage improvements to Nissen Channel; and (iii) further the City's

policies as generally described in, *inter alia*, Chapter 3-40 of the Municipal Code in connection with the future redevelopment of the Developers' Property.

#### **1.4 Nature of the Agreement.**

1.4.1 Intergovernmental Agreement. As among the City and BURA, this Agreement constitutes an intergovernmental agreement pursuant to C.R.S. § 29-1-203 and, as the general assembly has expressly authorized pursuant thereto, such Parties intend that their respective obligations under this Agreement are to be enforceable by specific performance and or injunctive relief or other equitable remedies in addition to any remedies otherwise available at law.

1.4.2 Reimbursement Agreement. This Agreement constitutes a written agreement by the BURA to reimburse WRG pursuant to Section 4.1 of this Agreement for up to fifty percent (50%) of the Two Million Dollars (\$2,000,000.00) advanced by WRG to finance the drainage improvements to Nissen Channel adjacent to the Developers' Property.

### **ARTICLE 2 OBLIGATIONS OF WRG**

**2.1 Deposit of Capital Contribution.** Within 60 days of the final execution of this Agreement, WRG will deposit with the City the sum of **Two Million Dollars and 00/100ths (\$2,000,000.00)** ("Capital Contribution") as WRG's contribution toward the regional drainage improvements that are required to Nissen Channel located adjacent to the Developers' Property. It is understood that the Capital Contribution will enable the City to accelerate the completion of the improvements to Nissen Channel into the 2024 and 2025 construction seasons, thus positively benefiting the Developers' Property and the Developers' ability to develop the Developers' Property. It is further understood that in the event the Developers' Property is developed on or before the expiration of this Agreement, up to fifty percent (50%) of the Capital Contribution is eligible for reimbursement to WRG by BURA pursuant to Section 4.1 of this Agreement. If WRG fails to timely deposit the Capital Contribution with the City, then this Agreement shall automatically terminate except for those provisions which expressly survive any termination.

**2.2 No Obligation to Develop.** This Agreement shall not be construed to create an implied obligation upon WRG or the Developers or any successor owners of the Developers' Property to develop any or all of the Developers' Property. The timing of any future development of the Developers' Property is at the sole discretion of the Developers or any successor owners of the Developers' Property. WRG acknowledge that any reimbursement of the Capital Contribution for the Nissen Channel improvements that is owed to WRG by BURA pursuant to Section 4.1 of this Agreement is dependent upon the development of the Developers' Property on or before August 5, 2038.

### **ARTICLE 3 CITY OBLIGATIONS**

**3.1 Application of Capital Contribution to Nissen Channel Improvements.** The City agrees to apply the entire Capital Contribution to the project fund for the regional drainage improvements to Nissen Channel, specifically the portion of the channel adjacent to the Developers' Property. Said improvements are depicted in the Improvement Plan.

**3.2 Completion of Nissen Channel Improvements.** The City shall complete or cause to be completed the Nissen Channel improvements in accordance with the Improvement Plan no later than the date that is one year from the Effective Date. The City represents and warrants that upon completion of the improvements contemplated by the Improvement Plan, the flood plain's impact on the Developer's Property will be reduced in a manner similar to that represented on **Exhibit A..**

**3.3 Pledge of Sales and Use Tax.** The City agrees to pay to BURA for inclusion in the special fund owned and maintained by BURA ("Special Fund") fifty percent (50%) of the revenue collected by the imposition of the City's sales or use tax at the rate of 3.50%, which percentage excludes 0.25% presently allocated for open space and 0.40% presently allocated for county functions, levied and collected on construction and building materials delivered and used in the development of the Developers' Property during the Term solely from the initial construction of the private improvements on the Developers' Property. Available pledged sales or use tax revenue shall not include use tax generated in connection with subsequent repair, additions to, replacement of or rehabilitation of any improvements on the Developers' Property after issuance of an initial certificate for occupancy, including, without limitation, subsequent tenant improvements or other build to suit leasehold improvements. No more than twice annually, Developers may submit a certificate to the City evidencing the sales or use tax paid on construction and building materials delivered and used in the development of the Developers' Property along with receipts thereof evidencing the amount of sales or use tax paid ("Sales Tax Certificate"). Upon receipt of a Sales Tax Certificate from the Developers, the City shall promptly transfer the applicable sales or use tax amount identified in the Sales Tax Certificate and calculated under this Section 3.3 to the Special Fund.

#### **ARTICLE 4 BURA OBLIGATIONS**

**4.1 Reimbursement Obligation.** BURA agrees to promptly pay to WRG up to fifty percent (50%) of the Capital Contribution paid by Developers to the City plus interest calculated at a rate of eight percent (8.0%) per annum ("Reimbursement Obligation"). The Reimbursement Obligation shall be promptly payable solely from the amounts in the Special Fund, and which include: (a) sales and use tax revenue paid to BURA by the City as set forth in Section 3.3 above; and (b) property tax revenue as is defined in Section 4.2 below. The Reimbursement Obligation is limited to only those amounts available in the Special Fund and shall terminate with the termination of this Agreement regardless of the amount of reimbursement that has been paid to WRG, if any. By way of example only, attached hereto as **Exhibit C** is an illustration of how the Reimbursement Obligation is to be paid by BURA to WRG under this Agreement.

**4.2 Pledged Property Tax.** BURA agrees to deposit into the Special Fund fifty percent (50%) of the Property Tax Increment Revenue received by BURA pursuant to Colorado Urban Renewal Law and the Lowell Gateway Urban Renewal Plan from the increase in assessed value, if any, above the base assessed value of the Developers' Property, which amount is the base amount established by the Lowell Gateway Urban Renewal Plan (the "Property Tax Increment Revenue"). The Property Tax Increment Revenue is subject to reduction based on abatements or reduction in accordance with C.R.S. § 31-25-107(9)(a)(III). For the purpose of clarity of understanding, the Parties acknowledge that the Pledged Property Tax to be deposited into the Special Fund is limited to only the pledged portion (50%) of the property tax increment revenue generated from the Developers' Property.

**4.3 Special Fund.** Subject to the terms and conditions set forth in this Agreement, including, without limitation Section 4.4 and Section 4.5, BURA agrees to make disbursements from the Special Fund to WRG in accordance with the procedure set forth in Section 4.4. The Special Fund and any payments or contributions made in accordance with Section 4.4 shall be the sole and exclusive source of payment of the Reimbursement Obligation. It is the intention of the Parties that there be no double compensation paid to WRG. If WRG receives payment in whole or in part from any public source other than the Special Fund, the Reimbursement Obligation shall be reduced by a like amount. At all times while it is holding and maintaining the Special Fund, BURA will earn interest on (and credit interest to) the Special Fund in accordance with its normal practices and procedures.

**4.4 Reimbursement Procedure.** The Reimbursement Obligation shall be promptly payable solely from: (a) the amounts in the Special Fund, and (b) any prepayment or third-party contributions made in accordance with Section 4.5, as follows:

On or before December 31<sup>st</sup> of each year during the Term, BURA shall disburse WRG by wire transfer to the account designated by WRG all funds that have been deposited into the Special Fund (including any interest thereon) to WRG. If WRG fails to designate an account prior to December 31 of the applicable year, then BURA shall make the annual disbursement via check to WRG and mail said check to the address identified in Section 7.19 below.

**4.5 Pre-Payment Rights.** BURA shall have the right to prepay the Reimbursement Obligation in whole or in part at any time. If the City or BURA receives a payment from a third party for all or part of the Reimbursement Obligation, BURA shall cause such payment (if any) to be deposited in the Special Fund and reimbursed to WRG in accordance with the terms of this Agreement. If applicable, the City shall transfer any payment it receives from a third party for all or part of the Reimbursement Obligation to BURA.

**4.6 Obligations Subject to Charter and Colorado Urban Renewal Law.** The obligations of BURA and the City under this Agreement are subject to the requirements of Colorado Urban Renewal Law and the Charter for the City.

**4.7 Books and Accounts; Financial Statements.** During the Term, BURA will keep, or cause to be kept, proper and current books and accounts in which complete and accurate entries shall be made of the amount of pledged revenue received by BURA; the amounts deposited into and paid out from the Special Fund; and such other calculations, allocations and payments required by this Agreement. Additionally, BURA shall prepare or cause the City to prepare a complete financial statement on an annual basis in reasonable detail covering the above information, certified by a public accountant selected by the City, and shall furnish a copy of such statement to WRG upon request.

**4.8 Limitation.** During the Term, BURA shall not enter into any agreements or transaction that impairs the rights of WRG under this Agreement, including, without limitation, the right to receive the Reimbursement Obligation in accordance with the procedures established in this Agreement.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES**

**5.1 Representation and Warranties by BURA.** BURA represents and warrants that:

- (a) BURA is a Colorado urban renewal authority and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder;
- (b) BURA knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of BURA or its officials with respect to this Agreement that has not been disclosed in writing to WRG;
- (c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to BURA or its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which BURA is a party or by which it may be bound or affected;
- (d) This Agreement constitutes a valid and binding obligation of BURA, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors rights and by equitable principles, whether

considered at law or in equity. BURA will defend the validity of this Agreement in the event of any litigation arising hereunder that names BURA as a party or which challenges the authority of BURA to enter into or perform its obligations hereunder.

**5.2 Representations and Warranties by the City.** The City represents and warrants that:

- (a) The City is a Colorado municipal corporation and county and has the power to enter into and has taken all actions to date required to authorize this Agreement and to carry out its obligations hereunder;
- (b) The City knows of no litigation, proceeding, initiative, referendum, investigation or threat of any of the same contesting the powers of the City or its officials with respect to this Agreement that has not been disclosed in writing to WRG;
- (c) The execution and delivery of this Agreement and the documents required hereunder and the consummation of the transactions contemplated by this Agreement will not (i) conflict with or contravene any law, order, rule or regulation applicable to the City or its governing documents, (ii) result in the breach of any of the terms or provisions or constitute a default under any agreement or other instrument to which the City is a party or by which it may be bound or affected;
- (d) This Agreement constitutes a valid and binding obligation of the City, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors rights and by equitable principles, whether considered at law or in equity. The City will defend the validity of this Agreement in the event of any litigation arising hereunder that names the City as party or which challenges the authority of the City to enter into or perform its obligations hereunder.

**ARTICLE 6  
DEFAULT AND REMEDIES**

**6.1 Events Of Default.** If any Party fails in the performance of any covenant or promise in this Agreement and such failure continues for thirty (30) days after written notice specifying such default and requiring the same to be remedied is given by a non-defaulting Party to the defaulting Party, it shall be considered an event of default. If such default is not of a type which can reasonably be cured within such 30 day period and the defaulting Party commences such cure within such 30-day period, the defaulting Party shall have a reasonable period of time given the nature of the default following the end of such 30-day period to cure such default, provided that such defaulting Party is at all times within such additional time period actively and diligently pursuing such cure in good faith.

**6.2 Remedies.** Upon the occurrence and continuation of any default hereunder, the non-defaulting Party's remedies shall consist of:

- (a) Recovery of its actual damages as of the time of entry of judgment, limited to the amount of the Capital Contribution, plus interest at the rate set forth in Section 4.1 on any unreimbursed amount, plus all attorney costs and fees that the non-defaulting party expends resulting from a default under this Agreement, regardless of whether a default under this Agreement is litigated in a court of law. No Party shall be entitled to claim damages for special, consequential and/or exemplary damages. No commissioner, official, employee, attorney or agent of BURA or the City shall be personally liable to WRG under the Agreement or in the event of any Default by BURA or the City or for any amount that may become due to WRG under the Agreement, except for fraud, conversion or intentional acts; and
- (b) Any other remedy available at law, in equity or under the terms of this Agreement, including, without limitation, specific performance.

**ARTICLE 7  
MISCELLANEOUS PROVISIONS**

**7.1 Delays; Force Majeure.** Subject to the following provisions, time is of the essence. Any delays in or failure of performance by any Party of its obligations under this Agreement shall be excused and an equitable extension of time for performance shall be provided to such party if such delays or failure are a result of any one or more of the following events or circumstances that, alone or in combination, directly or indirectly, adversely affects such Party's performance of such obligation: fire, earthquake, storm or other casualty; strikes, lockouts, or other labor interruptions or shortages; war, rebellion, riots, acts of terrorism, or other civil unrest; acts of God; disruption to local, national, or international transport services; shortages of materials or equipment, epidemics; adverse weather; any other event beyond the applicable Party's reasonable control it being the purpose and intent of this provision that in the event of the occurrence of any such enforced delay, the time or times for performance of the obligations of the Parties with respect to the terms of the Agreement, as the case may be, shall be extended for a reasonable period because of the enforced delay; provided, that the Party seeking the benefit of the provisions of this section shall, within 30 days after such Party gains actual knowledge of such enforced delay, notify the other Parties thereof in writing in the manner provided for herein of the cause or causes thereof, and claim the right to an extension for the period of the enforced delay.

**7.2 Assignment; 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. The signatories to this Agreement affirm and warrant that they are fully authorized to enter into and execute this Agreement, and all necessary actions, notices, meetings and/or hearings pursuant to any law required to authorize their execution of this Agreement have been made.

**7.3 Titles of Sections.** Any titles of the several parts and sections of this Agreement are inserted for convenience or reference only and shall be disregarded in construing or interpreting any of its provisions.

**7.4 Amendment.** This Agreement may be amended only by an instrument in writing signed by the Parties.

**7.5 Waiver Of Breach.** A waiver by any party to this Agreement of the breach of any term or provision of this Agreement must be in writing and shall not operate or be construed as a waiver of any subsequent breach by any Party.

**7.6 Governing Law.** This Agreement shall be governed by the laws of the State of Colorado and exclusive venue for any litigation shall be the District Court of Broomfield County.

**7.7 Execution In Counterparts.** 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.

**7.8 No Third-Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities only as to 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.

**7.9 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.



**7.10 Severability.** If any provision of this Agreement as applied to any Party or to any circumstance shall be adjudged by a court to be illegal, invalid or unenforceable, in whole or in part, under present or future laws effective during the Term, 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. Furthermore, to the extent it does not materially alter the rights and obligations of the Parties, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as part of this Agreement, a provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible and still be legal, valid and enforceable and this Agreement shall be deemed reformed accordingly. Without limiting the generality of the foregoing, if all or any portion of the payments required by the terms of this Agreement are determined, by a court of competent jurisdiction in a final non-appealable judgment, to be contrary to public policy or otherwise precluded, the Parties shall utilize their reasonable best, good faith efforts to promptly restructure and/or amend this Agreement, or to enter into a new agreement, and to assure, to the extent legally permissible, that all payments shall be made to WRG as specified in this Agreement.

**7.11 Minor Changes.** This Agreement has been approved substantially in the form submitted to the governing bodies of the Parties. The officers executing this Agreement are authorized to make and may have made, minor changes to this Agreement and attached exhibits as they have considered necessary. So long as such changes were consistent with the intent and understanding of the Parties at the time of approval by the governing bodies, the execution of the Agreement shall constitute the approval of such changes by the respective Parties.

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

**7.13 Good Faith of Parties.** In the performance of this Agreement or in considering any requested approval, consent, 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.

**7.14 Parties Not Partners.** Notwithstanding any language in this Agreement or any other agreement, representation, or warranty to the contrary, the Parties shall not be deemed to be partners or joint ventures, and no Party shall be responsible for any debt or liability of any other Party.

**7.15 No Waiver Of Immunity.** Nothing contained in this Agreement constitutes a waiver of sovereign immunity or governmental immunity by any Party under applicable state law.

**7.16 Financial Obligations Of The City.** All financial obligations of the City under this Agreement, are subject to appropriations, 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 WRG.

**7.17 Multi-Fiscal Year Obligations of BURA.** The Parties acknowledge that, according to the decision of the Colorado Court of Appeals in *Olson v. City of Golden*, 53 P.3d 747 (2002), an urban renewal authority is not subject to the provisions of Article X, Section 20 of the Colorado Constitution. Accordingly, BURA's obligation to remit the pledged revenues in accordance with the terms and provisions of this Agreement does not require voter approval in advance and is not subject to annual appropriation.

**7.18 Additional Documents or Action.** The Parties agree to execute any additional documents or take any additional action, including but not limited to estoppel documents requested or required by lenders, that is necessary to carry out this Agreement or is reasonably requested by any Party to conform or clarify the intent of the provisions of this Agreement and to effectuate the agreements and the intent. Notwithstanding the foregoing, however, no Party shall be obligated to execute any additional document or take any additional action unless such document or action is reasonably acceptable to such Party. If all or any portion of this Agreement, or other agreements approved in connection with Agreement are asserted or determined to be invalid, illegal or are otherwise precluded, the Parties, within the scope of their powers and duties, will cooperate in the joint defense of such documents and, if such defense is unsuccessful, the Parties will use reasonable, diligent good faith efforts to amend, reform or replace such precluded items to assure, to the extent legally permissible, that each Party substantially received the benefits that it would have received under this Agreement.

**7.19 Notices.** Any notice required or permitted by this Agreement shall be in writing and shall be sufficiently given for all purposes if delivered 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 Parties each have designated an authorized representative as follows but may change their designated authorized representative and address by sending notice to the remaining Parties:

- (a) The City designates the City and County Manager as the authorized representative of the City under this Agreement. Email address is [manager@broomfield.org](mailto:manager@broomfield.org);
- (b) BURA designates the Executive Manager as the authorized representative of BURA under this Agreement. Email address is [manager@broomfield.org](mailto:manager@broomfield.org);
- (c) WRG designates Taylor Vance as the authorized representative of WRG under this Agreement. Email address is [taylorv@wrgco.com](mailto:taylorv@wrgco.com). Physical address: 620 South State Street, Salt Lake City, UT 84111;
- (d) If WRG is alleging that the City or BURA 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).

**7.20 Incorporation of Exhibits.** All exhibits attached to the Agreement are incorporated into and made a part of this Agreement.

**7.21 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties with respect to the subject matter hereof and replaces in their entirety any prior agreements, understandings, warranties or representations between the Parties on the matters specifically covered in this Agreement. This provision shall not apply to any separate, supplemental or other agreement required by BURA or the City pursuant to its rules and regulations.

**7.22 Recording.** This Agreement will not be recorded in the real property records of Broomfield County, Colorado.

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

CITY AND COUNTY OF BROOMFIELD, COLORADO

\_\_\_\_\_  
Mayor

(SEAL)

ATTEST

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

APPROVED AS TO FORM:

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

BROOMFIELD URBAN RENEWAL AUTHORITY

\_\_\_\_\_  
Chair

ATTEST:


\_\_\_\_\_  
Secretary

APPROVED AS TO FORM:

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

WRG:

WASATCH RESIDENTIAL GROUP, LLC,  
a Utah limited liability company

By:   
Name: Jeff Nielson  
Title: Manager

**Exhibit A**  
(Depiction of the Developers' Property)



**Exhibit B**  
(Drainage Improvements to be made adjacent to Developers' Property)

[Construction Plans to be Attached]





# CITY & COUNTY OF BROOMFIELD

## NISSEN RESERVOIR DRAINAGEWAY - PHASE 1

### MHFD PROJECT # 106302

### MHFD AGREEMENT # 24-04.12

## 100% CONSTRUCTION PLANS

### AUGUST 2024



**VICINITY MAP**  
1" = 1 MILE



**LOCATION MAP**  
1" = 400'

INDEX OF SHEETS	
SHEET NO.	DESCRIPTION
1	COVER SHEET
2	GENERAL NOTES
3	SURVEY CONTROL
4-7	HORIZONTAL CONTROL PLANS
8-10	REVENUE PLANS
11-13	CHANNEL GRADING PLANS
14-17	CHANNEL PLAN & PROFILE
18-21	TRAIL PLAN & PROFILE
22-26	FOUR-STRUT IMPROVEMENT PLANS
29-32	UTILITY PLANS
33-37	POSSIBLE WATERLINES PLANS
38-39	SANITARY SEWER PLANS
40-44	STORM DRAIN PLANS
45-46	FOUR-STRUT CULVERT PLANS
47-54	CHANNEL DETAILS
55-56	CHANNEL CROSS SECTIONS
57-57	EROSION CONTROL PLANS
58-58	LANDSCAPING PLANS
59-59	EROSION PLANS
60-60	STRUCTURAL PLANS
61-61	SLICE PLANS

**MILE HIGH FLOOD DISTRICT APPROVALS**

Developed by: <i>Laura A. Bronger</i> LAURA BRONGER EXECUTIVE DIRECTOR	19 August 2024 Date
Developed by: <i>David Stodas</i> DAVE STODAS DESIGN, CONSTRUCTION, & MAINTENANCE DIRECTOR	19 August 2024 Date
Developed by: <i>Charlie Peters</i> CHARLIE PETERS PII PROJECT MANAGER	16 August 2024 Date

**CITY & COUNTY OF BROOMFIELD APPROVALS**

ALL WORK SHALL BE CONFORMED TO CITY AND COUNTY OF BROOMFIELD STANDARD SPECIFICATIONS AND SPECIFICATIONS. THE DRAWING HAS BEEN PREPARED AND FOUND TO BE IN GENERAL COMPLIANCE WITH THESE STANDARDS AND SPECIFICATIONS AND OTHER CITY AND COUNTY REQUIREMENTS. THE ENGINEER, DESIGNER, ARCHITECT, CONTRACTOR, AND RESPONSIBILITY OF THE PROFESSIONAL LIABILITY INSURANCE COMPANY SIGNATURE SHALL REMAIN.

APPROVED BY: *[Signature]* 8/19/24  
DATE

**UTILITY NOTICE TO CONTRACTOR**

THE EXISTENCE AND LOCATION OF ANY UNDERGROUND UTILITIES OR STRUCTURES SHOWN ON THESE PLANS ARE OBTAINED BY A SEARCH OF AVAILABLE RECORDS. THE CONTRACTOR IS REQUIRED TO TAKE ALL PRECAUTIONARY MEASURES TO PROTECT THE UTILITIES SHOWN, AND ANY OTHER LINES OR STRUCTURES NOT SHOWN ON THESE PLANS, AND IS RESPONSIBLE FOR THE PROTECTION OF AND ANY DAMAGE TO THESE LINES OR STRUCTURES.



FOR AND ON BEHALF OF  
**ICON ENGINEERING, INC.**  
1008 B YORKMATE ST. SUITE 100  
CENTENNIAL, CO 80112  
303-551-6592

<i>[Signature]</i> MATT URSETTA, P.E. PRINCIPAL & PROJECT MANAGER	8/20/2024 Date
<i>[Signature]</i> RYAN MORROW, P.E., CFM PROJECT ENGINEER	8/20/2024 Date

**ENGINEER OF RECORD**

I HEREBY CERTIFY THAT THIS ENGINEERING DOCUMENT WAS PREPARED BY ME OR UNDER MY DIRECT PERSONAL SUPERVISION AND THAT I AM A DULY LICENSED PROFESSIONAL ENGINEER UNDER THE LAWS OF THE STATE OF COLORADO, FOR AND ON BEHALF OF ICON ENGINEERING, INC.

MATT URSETTA  
DATE



**GENERAL NOTES**

- ALL MATERIALS, WORKMANSHIP AND CONSTRUCTION OF PUBLIC IMPROVEMENTS SHALL MEET OR EXCEED THE STANDARDS AND SPECIFICATIONS SET FORTH IN THE MILE HIGH FLOOD DISTRICT (MHFD) STANDARD SPECIFICATION AND IN THE CITY AND COUNTY OF BROOMFIELD (CC) STANDARDS AND SPECIFICATIONS, AND APPLICABLE STATE AND FEDERAL REGULATIONS, WHERE THERE IS CONFLICT BETWEEN THESE PLANS AND THE SPECIFICATIONS, OR ANY APPLICABLE STANDARDS, THE HIGHER QUALITY STANDARD SHALL APPLY.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR RESTORING ALL DISTURBED SURFACES AND RELATED STRUCTURES, INCLUDING BUT NOT LIMITED TO STAKING AREAS, DRIVEWAYS, CURBS, OUTLETS, WALKS, FENCES, DITCHES, CULVERTS, PAVEMENTS, AND SIGNS, TO ORIGINAL CONDITIONS (OR BETTER). THE CONTRACTOR SHALL INCLUDE THIS WORK IN THE BID.
- ANY QUANTITIES LISTED ARE APPROXIMATIONS AND ARE FOR GENERAL INFORMATION ONLY. IT SHALL BE THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE ACTUAL QUANTITIES AND DIMENSIONS.
- SOILS THAT CLASSIFY AS GP, GW, GM, GC, SP, SW, SA, OR SC IN ACCORDANCE WITH THE USCS CLASSIFICATION SYSTEM (GRAHULAR MATERIALS) SHOULD BE COMPACTED TO 95 OR MORE PERCENT OF THE MAXIMUM MODIFIED PROCTOR DRY DENSITY AT MOISTURE CONTENTS WITHIN 2 PERCENT OF OPTIMUM MOISTURE CONTENT AS DETERMINED BY ASTM D1557. SOILS THAT CLASSIFY AS ML, MH, CL, OR CH SHOULD BE COMPACTED TO 95 PERCENT OF THE MAXIMUM STANDARD PROCTOR DENSITY AT MOISTURE CONTENTS FROM 1 PERCENT BELOW TO 2 PERCENT ABOVE THE OPTIMUM MOISTURE CONTENT AS DETERMINED BY ASTM D998.
- THE CONTRACTOR SHALL NOTIFY THE MHFD AND OBTAIN A MINIMUM OF 72 HOURS PRIOR TO STARTING CONSTRUCTION. THE CONTRACTOR IS RESPONSIBLE TO NOTIFY THE APPROPRIATE JURISDICTION PRIOR TO ANY REQUIRED INSPECTIONS. NOTIFICATIONS SHALL BE MADE AT LEAST 48 HOURS PRIOR TO REQUIRED INSPECTIONS.
- ALL MATERIALS AND WORKMANSHIP SHALL BE SUBJECT TO INSPECTION BY THE MHFD, CCB, ICON ENGINEERING, AND ITS SUBCONSULTANT ENGINEERS. MHFD, CCB, AND ICON ENGINEERING RESERVE THE RIGHT TO ACCEPT OR REJECT ANY SUCH MATERIALS OR WORKMANSHIP THAT DOES NOT CONFORM TO THE STANDARDS AND SPECIFICATIONS.
- THE CONTRACTOR SHALL BE SOLELY AND COMPLETELY RESPONSIBLE FOR THE CONDITIONS AT AND ADJACENT TO THE JOB SITE INCLUDING SAFETY OF ALL PERSONS AND PROPERTY DURING THE PERFORMANCE OF THE WORK. THIS REQUIREMENT SHALL APPLY CONTINUOUSLY AND SHALL NOT BE LIMITED TO NORMAL WORKING HOURS.
- THE CONTRACTOR SHALL PROTECT ALL EXISTING CURB, GUTTER, SIDEWALK AND ROADWAY PAVEMENT AT ACCESS POINTS FROM DAMAGE BY EQUIPMENT OR CONSTRUCTION. DAMAGE BY THE CONTRACTOR SHALL BE REMOVED AND REPLACED AT THE CONTRACTOR'S EXPENSE AND TO THE SATISFACTION OF THE OWNER.
- THE CONTRACTOR SHALL BE RESPONSIBLE TO IMMEDIATELY CLEAN UP ANY TRASH OR MUD ON THE SITE OR ADJACENT STREETS AS A RESULT OF CONSTRUCTION.
- STREET SWEEPING SHALL BE COMPLETED AT LEAST ONCE PER WEEK DURING PERIODS OF MATERIAL TRANSPORT.
- THE CONTRACTOR SHALL BE RESPONSIBLE TO IMMEDIATELY CLEAN UP ANY TRASH OR MUD ON THE SITE OR ADJACENT STREETS AS A RESULT OF CONSTRUCTION.
- CONSTRUCTION STAKING SHALL BE COMPLETED BY THE CONTRACTOR. ALL SURVEYING PROVIDED BY THE CONTRACTOR SHALL BE COMPLETED BY A PROFESSIONAL LAND SURVEYOR LICENSED IN THE STATE OF COLORADO.
- THE CONTRACTOR SHALL BE RESPONSIBLE FOR THE ACCEPTANCE AND CONTROL OF ALL FLOWS INCLUDING, STORMWATER FLOWS, IRRIGATION FLOWS, AND GROUNDWATER FLOWS ENTERING THE PROJECT SITE. ALL WORK SHALL BE COMPLETED IN DRY CONDITIONS.
- PROJECT WORK WILL BE IN AN ACTIVE STREAM. CONTRACTOR SHALL BE RESPONSIBLE FOR WATER CONTROL AND DEWATERING AS NECESSARY TO COMPLETE WORK. CONTRACTOR WILL BE RESPONSIBLE FOR COLORADO STATE REQUIREMENTS ASSOCIATED WITH LOSS OF SURFACE WATER AND GROUNDWATER THROUGH EVAPORATION. CONTRACTOR SHALL ALSO BE RESPONSIBLE FOR OBTAINING A LICENSE FOR CONSTRUCTION DEWATERING WELLS IF ONE OR MORE WILL BE USED.
- CONSTRUCTION EROSION AND SEDIMENT CONTROL BMPs SHALL BE INSTALLED AND MAINTAINED IN ACCORDANCE WITH THE PROJECT GRADING, EROSION, AND SEDIMENT CONTROL PLANS AND CITY AND COUNTY OF BROOMFIELD STANDARDS.

**UTILITY NOTES**

- A SUBSURFACE UTILITY ENGINEERING NOTIFICATION WAS SUBMITTED ON JANUARY 6TH, 2020 (DCKET NO. ADD0001285-80A) TO THE COLORADO UTILITY NOTIFICATION ASSOCIATION. THE EXISTENCE AND LOCATION OF UNDERGROUND UTILITIES SHOWN ON THESE PLANS WERE OBTAINED BY A SEARCH OF AVAILABLE RECORDS, DISCUSSIONS WITH THE UTILITY OWNERS AND OPERATORS, AND TESTHOLES. INFORMATION FROM TEST HOLES IS PRESENTED ON THE UTILITY DRAWINGS.
- THE CONTRACTOR SHALL NOTIFY THE NOTIFICATION ASSOCIATION PRIOR TO EXCAVATION WORK AND ABIDE BY ALL APPLICABLE STATUTES TO PROTECT UTILITIES. THE CONTRACTOR, UNLESS OTHERWISE NOTED ON THESE PLANS, SHALL PROTECT THE UTILITIES SHOWN AND ANY OTHER UTILITY LINES OR STRUCTURES NOT SHOWN ON THESE PLANS. THE CONTRACTOR WILL BE HELD RESPONSIBLE FOR DAMAGES TO THE UTILITIES.
- THE LOCATIONS OF ALL UTILITIES SHOWN ON THESE DRAWINGS ARE APPROXIMATE. IT SHALL BE THE RESPONSIBILITY OF THE CONTRACTOR TO VERIFY THE EXISTENCE AND LOCATION OF ALL UNDERGROUND UTILITIES BEFORE COMMENCING CONSTRUCTION AND TO COORDINATE THE CONSTRUCTION SCHEDULE WITH UTILITY OWNERS. NO ADDITIONAL PAYMENT WILL BE MADE FOR UTILITY COORDINATION AND THE MINOR ADJUSTMENT OF STRUCTURES TO CLEAR A CONFLICTING UTILITY.
- THE CONTRACTOR SHALL CONTACT THE UTILITY NOTIFICATION CENTER OF COLORADO (UNCC) FOR UTILITY LOCATES AT 811 FOR UTILITY LOCATIONS AT LEAST THREE WORKING DAYS PRIOR TO ANY EXCAVATION OR GRADING.
- THE CONTRACTOR SHALL FIELD VERIFY ALL UTILITIES AND COORDINATE WITH UTILITY OWNERS PRIOR TO STARTING CONSTRUCTION. THE CONTRACTOR SHALL BE RESPONSIBLE FOR PROTECTING ALL UTILITIES DURING CONSTRUCTION AND SHALL HOLD THE OWNERS AND THE ENGINEER HARMLESS FOR THE DAMAGE ARISING FROM FAILURE TO ADEQUATELY PROTECT UTILITIES. THE MHFD, CCB, AND ICON ENGINEERING WILL NOT BE RESPONSIBLE FOR DAMAGES TO UTILITIES AND/OR ANY OTHER DELAYS OR COSTS ASSOCIATED WITH DAMAGES TO UTILITIES.
- THE CONTRACTOR SHALL RECONSTRUCT ANY WATER AND SEWER UTILITIES OR SERVICES DAMAGED BY EXECUTION OF THE WORK AT THE CONTRACTOR'S EXPENSE.
- IF DURING CONSTRUCTION, CONDITIONS ARE ENCOUNTERED WHICH COULD INDICATE A SITUATION THAT IS NOT IDENTIFIED IN THE PLANS OR SPECIFICATIONS, THE CONTRACTOR SHALL CONTACT THE ENGINEER IMMEDIATELY.

**SITE RESTORATION NOTES**

- SEED MIX AND PLANTINGS SHALL BE COORDINATED WITH DDM DESIGN PRIOR TO CONSTRUCTION. SEED MIX AND PLANT LISTS ARE INCLUDED ON THE LANDSCAPING PLAN.
- LOCATIONS AND SPECIES FOR TREES, SHRUBS AND HERBACEOUS PLUG PLANTINGS SHALL BE COORDINATED WITH THE OWNERS AND DDM DESIGN.
- ESTABLISHMENT PROCEDURES AND WATERING SHALL BE IN ACCORDANCE WITH LANDSCAPING PLANS AND SPECIFICATIONS.

**ABBREVIATIONS**

- APPROX - APPROXIMATELY  
 ALD - ALUMINUM  
 CI - CAST IRON  
 CL - CENTER LINE  
 COB - CITY AND COUNTY OF BROOMFIELD  
 CFS - CUBIC FEET PER SECOND  
 C & G - CURB AND GUTTER  
 C & S - CURB, GUTTER, & SIDEWALK  
 CONN - CONNECT, CONNECTION  
 CPM - CAPITAL PROJECTS MANAGEMENT  
 DIP - DUCTILE IRON PIPE (WATER)  
 DT - DECIDUOUS TREE  
 DW - DRAINAGE WATER DEPARTMENT  
 E - EAST  
 EOL - ENERGY GRADE LINE  
 EDA - EDGE OF ASPHALT  
 EX, EXST - EXISTING  
 FG - FINAL GRADE  
 FL - FLOW LINE  
 FO - FIBER OPTIC LINE  
 FS - FINISHED SURFACE  
 GB - GATE BREAK  
 GV - GATE VALVE  
 HCL - HORIZONTAL CONTROL LINE  
 HGL - HYDRAULIC GRADE LINE  
 HORZ - HORIZONTAL  
 INV - INVERT  
 KB - KICK BLOCK  
 LE - LEAKY FLOW  
 ME - MATCH EXISTING  
 MH - MANHOLE  
 N - NORTH  
 NJM - NATIONAL JEWISH HEALTH HOSPITAL  
 N/S - NOT TO SCALE  
 ONE - OVERHEAD ELECTRIC LINE  
 PC - POINT OF CURVATURE  
 PI - POINT OF INTERSECTION  
 PL - PROPERTY LINE  
 POB - POINT OF BEGINNING  
 POE - POINT OF ENDING  
 PT - POINT OF TANGENCY  
 PVE - POINT OF VERTICAL CURVATURE, POINT OF VERTICAL CURVATURE  
 PVI - POINT OF VERTICAL INTERSECTION  
 PVR - POINT OF VERTICAL REVERSE CURVATURE  
 PVT - POINT OF VERTICAL TANGENCY  
 Q - DESIGN FLOW  
 Q98 - FULL FLOW CAPACITY  
 RCBC - REINFORCED CONCRETE BOX CULVERT  
 RCP - REINFORCED CONCRETE PIPE  
 RPMP - REINFORCED POLYMER MORTAR PIPE  
 R - SOUTH  
 S - SLEEVE  
 STM - STORM WATER  
 SS / SSMR - SANITARY SEWER  
 SW - SIDEWALK  
 TELE - TELEPHONE LINE  
 TCE - TEMPORARY CONSTRUCTION EASEMENT  
 TOC - TOP OF CURB  
 T.O.P. - TOP OF PIPE  
 T.O.W. - TOP OF WALL  
 TYP - TYPICAL  
 UNK - UNKNOWN  
 VERT - VERTICAL  
 VCP - WETTED CLAY PIPE  
 W - WEST  
 WY - WITH  
 WAT / WTR - WATER

**MASTER LEGEND**

- EL (B) --- EXISTING ELECTRIC UTILITY (QUALITY LEVEL B)
- EI (D) --- EXISTING ELECTRIC UTILITY (QUALITY LEVEL D)
- UG (B) --- EXISTING GAS UTILITY (QUALITY LEVEL B)
- UG (D) --- EXISTING GAS UTILITY (QUALITY LEVEL D)
- SS (B) --- EXISTING SANITARY SEWER (QUALITY LEVEL B)
- SS (D) --- EXISTING SANITARY SEWER (QUALITY LEVEL D)
- ST (B) --- EXISTING STORM SEWER (QUALITY LEVEL B)
- ST (D) --- EXISTING STORM SEWER (QUALITY LEVEL D)
- CS (B) --- EXISTING STORM SEWER (QUALITY LEVEL B)
- CS (D) --- EXISTING STORM SEWER (QUALITY LEVEL D)
- W (B) --- EXISTING REUSE WATERLINE (QUALITY LEVEL B)
- W (D) --- EXISTING POTABLE WATERLINE (QUALITY LEVEL B)
- W (C) --- EXISTING POTABLE WATERLINE (QUALITY LEVEL C)
- W (D) --- EXISTING POTABLE WATERLINE (QUALITY LEVEL D)
- --- EXISTING SECTION LINE
- --- EXISTING RIGHT OF WAY
- --- EXISTING LOT LINE
- --- EXISTING EASEMENT LINE
- --- EXISTING IRRIGATION CONTROL BOX
- --- EXISTING LIGHT POLE
- --- EXISTING UTILITY MANHOLE
- --- EXISTING STORM FLARED END SECTION

**CITY & COUNTY OF BROOMFIELD APPROVALS**

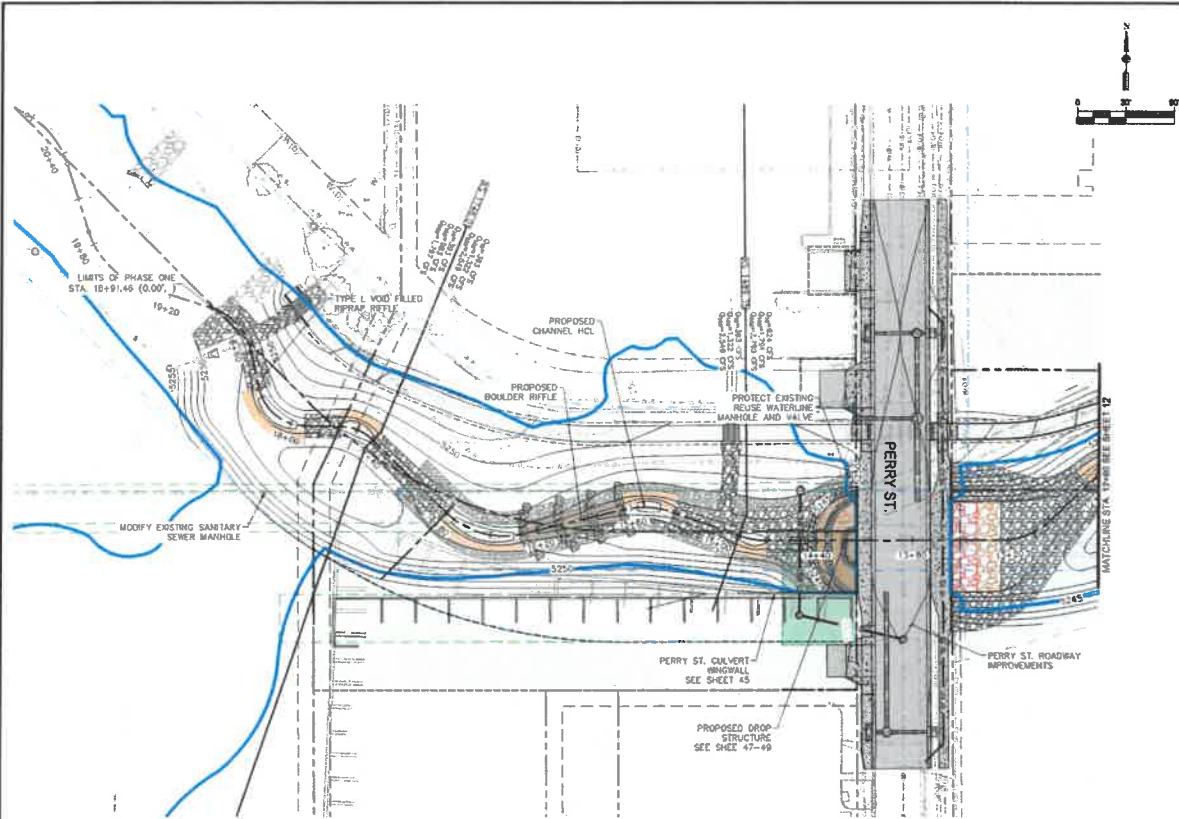
ALL WORK SHALL BE CONDUCTED IN ACCORDANCE WITH THE CITY AND COUNTY OF BROOMFIELD STANDARDS AND SPECIFICATIONS. THIS DRAWING HAS BEEN REVIEWED AND FOUND TO BE IN COMPLIANCE WITH THESE STANDARDS AND SPECIFICATIONS AND CITY AND COUNTY REQUIREMENTS. THE ENGINEERING DESIGN AND CONCEPT PLANNING IS THE RESPONSIBILITY OF THE PROFESSIONAL ENGINEER. WELLS, STORM SEWER, AND OTHER UTILITIES SHALL BE FIELD VERIFIED.

APPROVED BY: *[Signature]* DATE: 5/8/2024  
 ACCEPTED BY: *[Signature]* DATE: 5/8/2024



PROJECT CONTACT LIST			
ORGANIZATION	TITLE	NAME	PHONE NUMBER
MILE HIGH FLOOD DISTRICT	PROJECT MANAGER	DAN HILL, PE, CFM	303-749-8422
CITY AND COUNTY OF BROOMFIELD	PROJECT MANAGER	REBECCA BAKER, PE, CFM	303-438-6798
CITY AND COUNTY OF BROOMFIELD	UTILITIES SUPERVISOR	JEFF ROOZER	303-484-8118
ICON ENGINEERING	CIVIL ENGINEER	MATT BETTLE, PE	303-291-0802
ICON ENGINEERING	STRUCTURAL ENGINEER	JOHN MUSLUCCI, PE	303-853-8014
GROUND ENGINEERING	GEOTECHNICAL ENGINEER	AAMY GRANADAL, PE	303-288-1888
DDM DESIGN	LANDSCAPE DESIGN	MARK WILCOX	720-763-3888
DALEY LAND SURVEYING	SURVEYOR	ROB DALEY, PLS	303-853-9841

	PREPARED FOR: 	PREPARED BY: 	PLAN DRAWN: [ ] DESIGNED: [ ] CHECKED: [ ] DATE: [ ]	<b>NISSEN RESERVOIR DRAINAGEWAY</b> PHASE 1 GENERAL NOTES	DATE MAY 2024  SHEET 2 OF 80
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**LEGEND**

	SECTION LINE
	EXISTING RIGHT OF WAY
	EXISTING PROPERTY/LOT LINE
	EXISTING DRAINAGE EASEMENT
	EXISTING SANITARY SEWER EASEMENT
	EXISTING UTILITY &/OR ACCESS EASEMENT
	PROPOSED HCL
	PROPOSED TEMPORARY CONSTRUCTION EASEMENT
	PROPOSED DRAINAGE EASEMENT
	PROPOSED SANITARY SEWER EASEMENT
	PROPOSED 10-IN WATERLINE
	PROPOSED 12-IN STORM SEWER
	PROPOSED 12-IN SANITARY SEWER
	PROPOSED MAJOR CONTOUR
	PROPOSED MINOR CONTOUR
	EXISTING MAJOR CONTOUR
	EXISTING MINOR CONTOUR
	BANKFULL CHANNEL LIMITS
	POST-CONSTRUCTION 100-YR FLOODPLAIN
	PROPOSED BOULDER RIFFLE
	PROPOSED - BURIED TYPE L SOIL RIPRAP
	PROPOSED - TYPE L VOID FILLED RIPRAP
	PROPOSED - TYPE M VOID FILLED RIPRAP
	PROPOSED - TYPE H VOID FILLED RIPRAP
	PROPOSED ROCK TOE STREAM BANK STABILIZATION. SEE SHEET 52
	PROPOSED PEDESTRIAN TRAIL

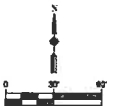
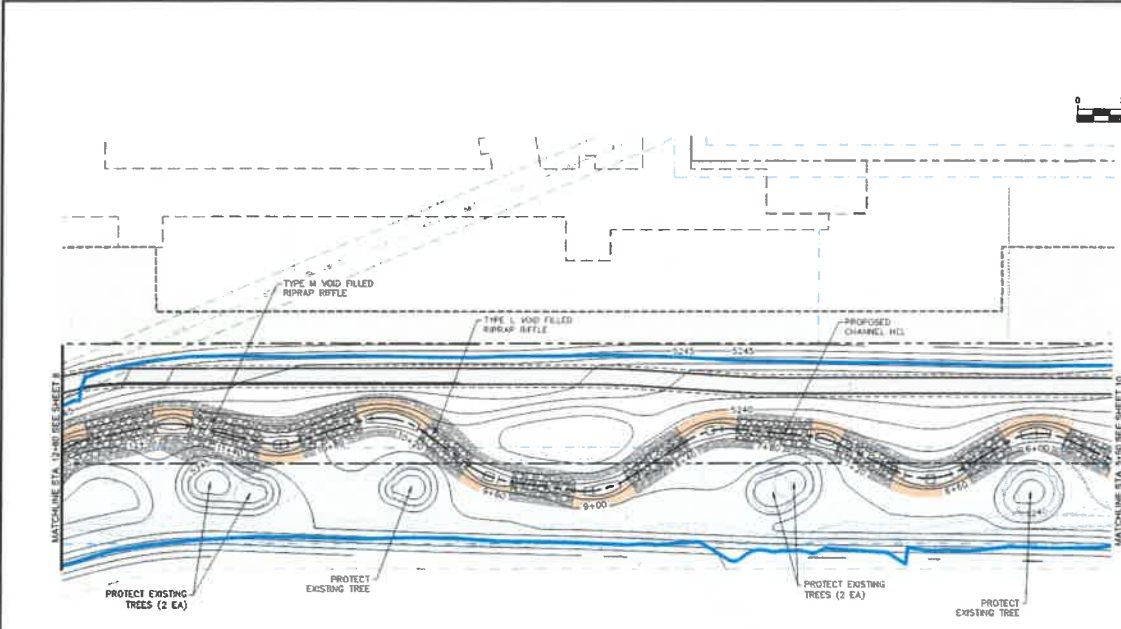
- NOTES:**
- SEE SHEETS 29 THRU 32 FOR UTILITY DRAWINGS. SEE SUE DRAWINGS PREPARED BY LANDMARK ENGINEERING (SEE ATTACHED SHEETS).
  - SEE SHEETS 3 THRU 6 FOR PROPERTY AND EASEMENT INFORMATION.
  - SEE SHEETS 14 THRU 16 FOR LOW FLOW CHANNEL PLAN AND PROFILES.
  - SEE SHEETS 18 THRU 20 FOR TRAIL PLAN AND PROFILES.
  - SEE SHEETS 22 THRU 28 FOR ROADWAY DRAWINGS.
  - SEE SHEETS 55 THRU 56 FOR CROSS SECTIONS.
  - GRADES SHALL NOT EXCEED 4:1 UNLESS OTHERWISE NOTED.
  - SANITARY SEWER MANHOLES IDENTIFIED AS "WOOFY" IN THE PLANS SHALL BE LINED AND SEALED.

**CITY & COUNTY OF BROOMFIELD APPROVALS**

ALL WORK SHALL BE CONFORMED TO CITY AND COUNTY OF BROOMFIELD ORDINANCES AND SPECIFICATIONS. THIS DRAWING HAS BEEN REVIEWED AND FOUND TO BE IN GENERAL COMPLIANCE WITH THESE ORDINANCES AND SPECIFICATIONS AND THEREFORE CITY AND COUNTY APPROVANTS. THE ENGINEER'S DESIGN AND CONSTRUCTION SHALL BE THE RESPONSIBILITY OF THE PROFESSIONAL ENGINEER WHILE THE CITY AND COUNTY APPROVANTS ARE RESPONSIBLE FOR THE REVIEW AND APPROVAL OF THE DRAWING.



	PREPARED FOR: BROOMFIELD	PREPARED BY: ICON ENGINEERING	PLAN DESIGN CHECKED DATE	NISSEN RESERVOIR DRAINAGE WAY PHASE 1 NRD - CHANNEL GRADING - GRAD - 1	DATE MAY 2024 SHEET 11 OF 60



**LEGEND**

- SECTION LINE
- EXISTING RIGHT OF WAY
- EXISTING PROPERTY/LOT LINE
- EXISTING DRAINAGE EASEMENT
- EXISTING SANITARY SEWER EASEMENT
- EXISTING UTILITY &/OR ACCESS EASEMENT
- PROPOSED HCL
- PROPOSED HCL
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT
- PROPOSED DRAINAGE EASEMENT
- PROPOSED SANITARY SEWER EASEMENT
- W 10
- PROPOSED 10-IN WATERLINE
- PROPOSED 12-IN SANITARY SEWER
- 5200
- 5201
- PROPOSED MAJOR CONTOUR
- EXISTING MAJOR CONTOUR
- EXISTING MINOR CONTOUR
- BANKFULL CHANNEL LIMITS
- POST-CONSTRUCTION 100-YR FLOODPLAIN
- PROPOSED BOLDER RIFLE
- PROPOSED - BURIED TYPE L SOL RIPRAP
- PROPOSED - TYPE L VOID FILLED RIPRAP
- PROPOSED - TYPE M VOID FILLED RIPRAP
- PROPOSED - TYPE H VOID FILLED RIPRAP
- PROPOSED ROCK TOE STREAM BANK STABILIZATION. SEE SHEET 52
- PROPOSED PEDESTRIAN TRAIL

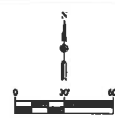
- NOTES:**
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**CITY & COUNTY OF BROOMFIELD APPROVALS**

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	<p>PREPARED FOR:</p> <p><b>BROOMFIELD</b></p> <p>PILE HIGH FLOOD DISTRICT</p>	<p>PREPARED BY:</p> <p><b>ICON ENGINEERING</b></p> <p>PLAN DESIGN DESIGNED SELECTED CHECKED MAP</p>	<p><b>NISSEN RESERVOIR DRAINAGEWAY</b></p> <p>PHASE 1</p> <p>NRD - CHANNEL GRADING - GRAD - 2</p>	<p>DATE</p> <p>MAY 2024</p> <p>SHEET</p> <p>12 OF 60</p>
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**LEGEND**

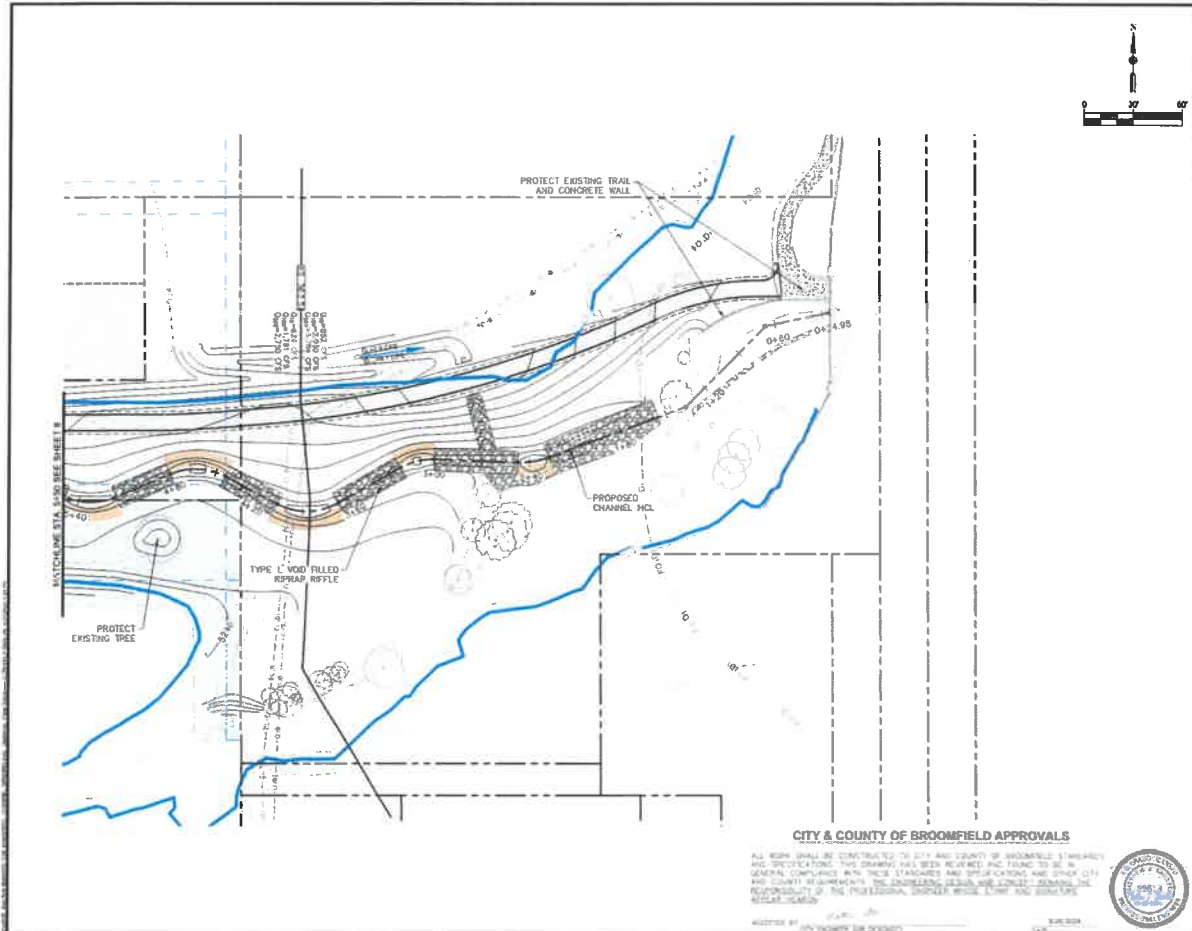
- SECTION LINE
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- EXISTING DRAINAGE EASEMENT
- EXISTING SANITARY SEWER EASEMENT
- EXISTING UTILITY &/OR ACCESS EASEMENT
- PROPOSED INCL
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT
- PROPOSED DRAINAGE EASEMENT
- PROPOSED SANITARY SEWER EASEMENT
- W 10
- PROPOSED 10-IN WATERLINE
- S8 S2
- S220
- PROPOSED MAJOR CONTOUR
- PROPOSED MINOR CONTOUR
- EXISTING MAJOR CONTOUR
- EXISTING MINOR CONTOUR
- BANKFULL CHANNEL LIMITS
- POST-CONSTRUCTION 100-YR FLOODPLAIN
- PROPOSED BOULDER RFFLE
- PROPOSED - BURED TYPE L SOL RIPRAP
- PROPOSED - TYPE L VOID FILLED RIPRAP
- PROPOSED - TYPE M VOID FILLED RIPRAP
- PROPOSED - TYPE H VOID FILLED RIPRAP
- PROPOSED ROCK TOE STREAM BANK STABILIZATION, SEE SHEET 52
- PROPOSED PEDESTRIAN TRAIL

**NOTES:**

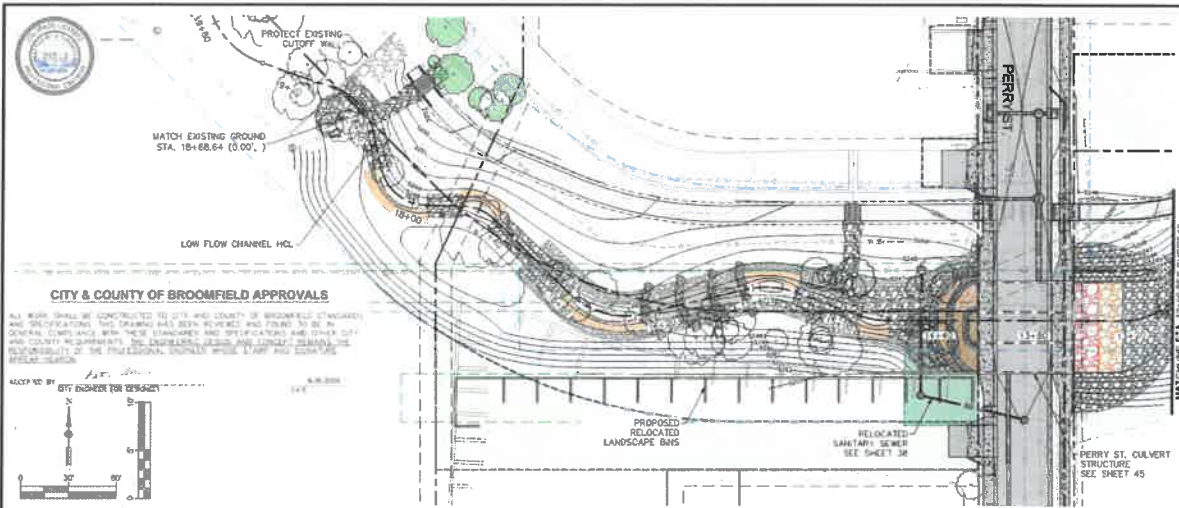
1. SEE SHEETS 29 THRU 32 FOR UTILITY DRAWINGS. SEE SUE DRAWINGS PREPARED BY LANDMARK ENGINEERING (SEE ATTACHED SHEETS).
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8. SANITARY SEWER MANHOLES IDENTIFIED AS 'MODIFY' IN THE PLANS SHALL BE LINED AND SEALED.

**CITY & COUNTY OF BROOMFIELD APPROVALS**

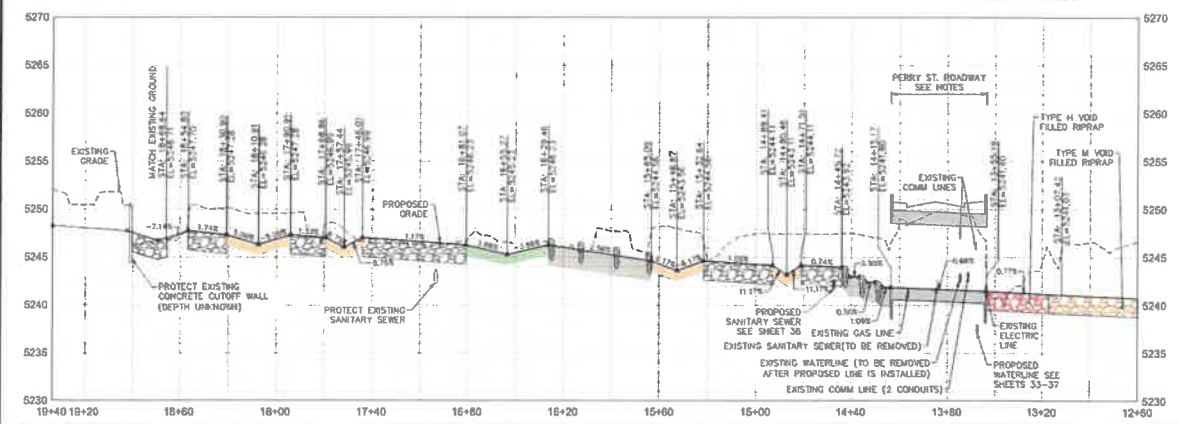
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		PREPARED FOR: 	PREPARED BY: 	PLAN: DESIGN: REVISIONS: CHECKED: DATE:	<b>NISSEN RESERVOIR DRAINAGEWAY</b> <b>PHASE 1</b> <b>NRD - CHANNEL GRADING - GRAD - 3</b>	DATE: <b>MAY 2024</b> SHEET: <b>13 OF 90</b>
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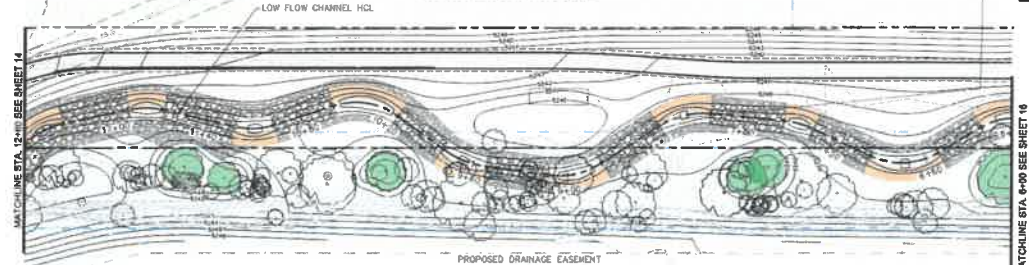
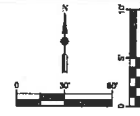


- LEGEND**
- SECTION LINE
  - EXISTING RIGHT OF WAY
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  - EXISTING DRAINAGE EASEMENT
  - EXISTING SANITARY SEWER EASEMENT
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  - PROPOSED HGL
  - PROPOSED TEMPORARY CONSTRUCTION EASEMENT
  - PROPOSED DRAINAGE EASEMENT
  - PROPOSED SANITARY SEWER EASEMENT
  - W 18" PROPOSED 18" WATERLINE
  - 36 12" PROPOSED 36" STORM SEWER
  - 36 12" PROPOSED 36" SANITARY SEWER
  - 5280 PROPOSED MAJOR CONTOUR
  - 5281 PROPOSED MINOR CONTOUR
  - 5282 PROPOSED EXISTING MAJOR CONTOUR
  - 5283 PROPOSED EXISTING MINOR CONTOUR
  - PROPOSED BOULDER RIFFLE (SEE SHEET 53)
  - PROPOSED - TYPE L VOID FILLED RIPRAP
  - PROPOSED - TYPE M VOID FILLED RIPRAP
  - PROPOSED - TYPE H VOID FILLED RIPRAP
  - PROPOSED - BURIED TYPE L SOIL RIPRAP
  - PROPOSED RIPRAP TOE BANK PROTECTION (SEE SHEETS 48 & 49)
  - PROPOSED PEDESTRIAN TRAIL



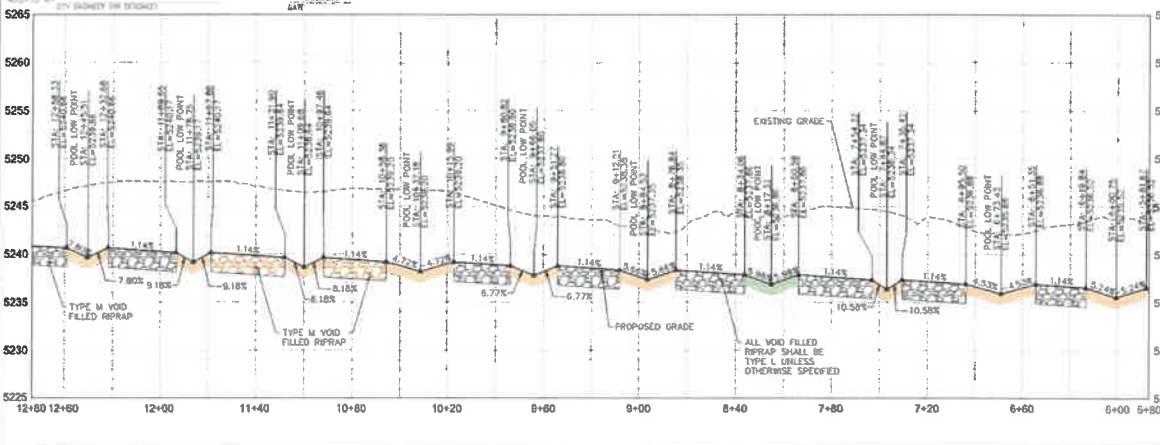
- NOTES:**
1. SEE SHEETS 3 THRU 6 FOR PROPERTY AND EASEMENT INFORMATION, AS WELL AS LAYOUT GEOMETRY FOR THE LOW FLOW CHANNEL, HGL.
  2. SEE SHEETS 11 THRU 13 FOR THE CHANNEL GRADING PLAN.
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  4. SEE SHEETS 22 THRU 28 FOR ROADWAY DRAWINGS.
  5. SEE SHEETS 29 THRU 32 FOR DRY UTILITY INFORMATION.
  6. SEE SHEET 45 & 46 FOR PERRY ST. CULVERT STRUCTURE DETAILS.
  7. SEE SHEETS 55 THRU 58 FOR CHANNEL CROSS SECTIONS.
  8. SEE SHEETS 50 THRU 54 FOR BANKFULL DETAILS INCLUDING BOULDER RIFFLES, BANKFULL RIFFLES, TOE STABILIZATION.
  9. PROFILE GRADE BREAKS LABELED AS POOL LOW POINTS ARE OFFSET HORIZONTALLY FROM THE HGL. SEE TYPICAL POOL SECTION ON SHEET 51.

				<b>PLAN</b> DRAIN 1805/1812 DESIGNED 1805/170 CHECKED MAF	<b>PREPARED FOR:</b> <b>BROOMFIELD MIFD</b> MILE HIGH FLOOD DISTRICT	<b>PREPARED BY:</b> <b>ICON ENGINEERING</b>	<b>PLAN</b> <b>NISSEN RESERVOIR DRAINAGE</b> PHASE 1 CHANNEL PLAN & PROFILE - 1	DATE MAY 2024
	APRIL							SHEET 14 OF 90



**CITY & COUNTY OF BROOMFIELD APPROVALS**

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- LEGEND**
- SECTION LINE
  - EXISTING RIGHT OF WAY
  - EXISTING PROPERTY/LOT LINE
  - EXISTING DRAINAGE EASEMENT
  - EXISTING SANITARY SEWER EASEMENT
  - EXISTING UTILITY &/OR ACCESS EASEMENT
  - PROPOSED HDL
  - PROPOSED TEMPORARY CONSTRUCTION EASEMENT
  - PROPOSED DRAINAGE EASEMENT
  - PROPOSED SANITARY SEWER EASEMENT
  - 10" 10' PROPOSED 10-IN WATERLINE
  - 36" 32' PROPOSED 36-IN STORM SEWER
  - 5280 PROPOSED 12-IN SANITARY SEWER
  - 5280 PROPOSED MAJOR CONTOUR
  - 5281 PROPOSED MINOR CONTOUR
  - 2'-2' EXISTING MAJOR CONTOUR
  - 2'-2' EXISTING MINOR CONTOUR
  - PROPOSED BOULDER RIPPLE (SEE SHEET 53)
  - PROPOSED - TYPE L VOID FILLED RIPRAP
  - PROPOSED - TYPE M VOID FILLED RIPRAP
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  - PROPOSED - BURIED TYPE L SOIL RIPRAP
  - PROPOSED RIPRAP FOR BANK PROTECTION (SEE SHEETS 48 & 49)
  - PROPOSED PEDESTRIAN TRAIL

- NOTES:**
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  2. SEE SHEETS 11 THRU 13 FOR THE CHANNEL GRADING PLAN.
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  9. PROFILE GRADE BEAMS LABELED AS POOL LOW POINTS ARE OFFSET HORIZONTALLY FROM THE HDL. SEE TYPICAL POOL SECTION ON SHEET 51.

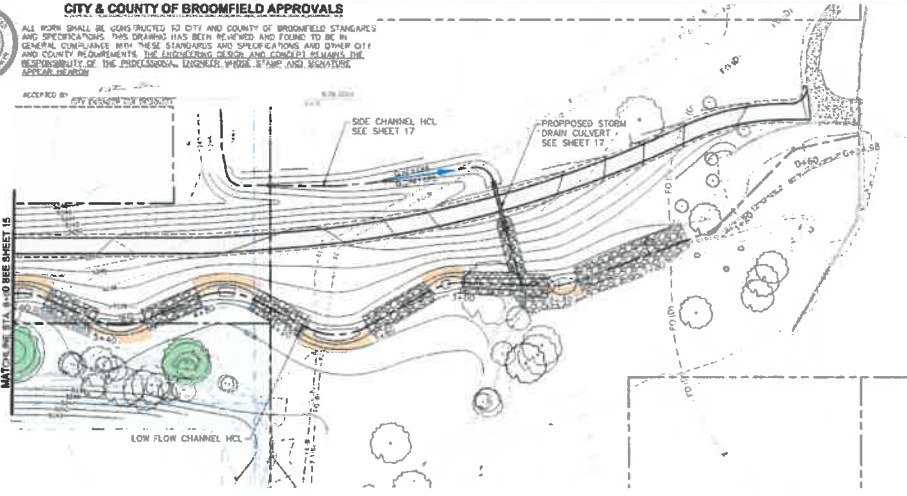
		PREPARED FOR: <b>BROOMFIELD MHPD</b> MILE HIGH FLOOD DISTRICT	PREPARED BY: <b>ICON ENGINEERING</b>	PLAN DRAWN DESIGNED CHECKED DATE	<b>NISSEN RESERVOIR DRAINAGEWAY</b> PHASE 1 CHANNEL PLAN & PROFILE - 2	DATE <b>MAY 2024</b> SHEET <b>15 OF 80</b>
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**CITY & COUNTY OF BROOMFIELD APPROVALS**

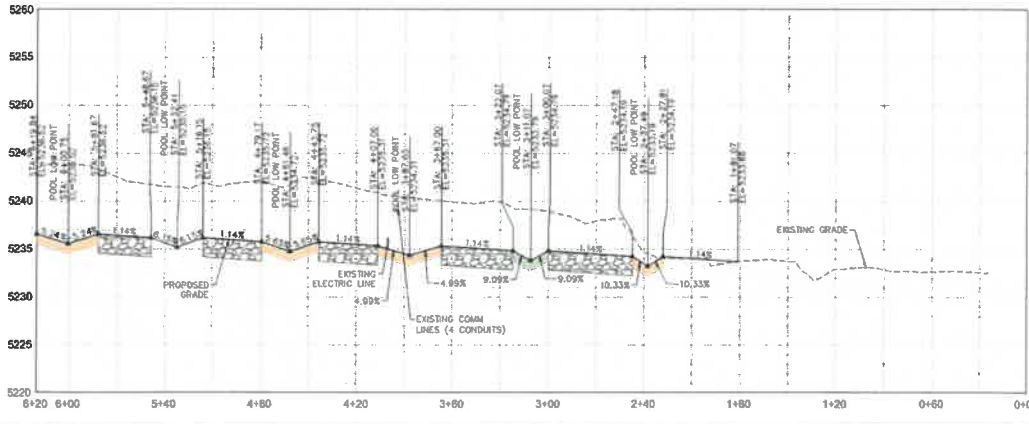
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ACCEPTED BY: [Signature]  
CITY ENGINEERING DEPARTMENT



**LEGEND**

- SECTION LINE
- EXISTING RIGHT OF WAY
- EXISTING PROPERTY/LOT LINE
- EXISTING DRAINAGE EASEMENT
- EXISTING SANITARY SEWER EASEMENT
- EXISTING UTILITY &/OR ACCESS EASEMENT
- PROPOSED HCL
- PROPOSED TEMPORARY CONSTRUCTION EASEMENT
- PROPOSED DRAINAGE EASEMENT
- PROPOSED SANITARY SEWER EASEMENT
- W 15" PROPOSED 15-IN WATERLINE
- S 8" PROPOSED 8-IN SANITARY SEWER
- S 20" PROPOSED 20-IN SANITARY SEWER
- S 20" PROPOSED MAJOR CONTOUR
- S 20" PROPOSED MINOR CONTOUR
- EXISTING MAJOR CONTOUR
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				<b>PLAN</b> DRAWN: [Name] DESIGNED: [Name] CHECKED: [Name]	<b>NISSAN RESERVOIR DRAINAGEWAY</b> <b>PHASE 1</b> <b>CHANNEL PLAN &amp; PROFILE - 3</b>	DATE: MAY 2024 SHEET: 18 OF 80
	PREPARED FOR:	PREPARED BY:	PLAN NO:	DATE:		



**Exhibit C**  
(Reimbursement Model)

The following illustrates a hypothetical example of how the Reimbursement Obligation is satisfied during a given year throughout the Term of the Agreement. Capitalized terms have the meanings provided in the Agreement.

<b>Line</b>	<b>Description</b>	<b>Amount</b>
1	WRG Capital Contribution to City on January 1, 2025	\$2,000,000
2	Reimbursable portion of Capital Contribution	\$1,000,000
3	Non-reimbursable portion of Capital Contribution	\$1,000,000
4	Interest Accrued in 2025 (8% per annum)	\$80,000
5	BURA receipt from sales and use tax increment from Developers' Property in 2025	\$100,000
6	BURA receipt of Property Tax Increment Revenue from Developers' Property in 2025	\$100,000
7	Total in Special Fund as of December 31, 2025	\$200,000
8	Disbursement to WRG on December 31, 2025 from Special Fund	\$200,000
9	Outstanding balance due to WRG on January 1, 2026 (Line 3 + Line 4 – Line 8)	\$880,000



### D. Public Hearing - Ordinance for Jefferson Parkway Withdrawal - Second Reading

Council's consideration of approval of an ordinance, on second reading, regarding a delayed land transfer and related to Broomfield's withdrawal from the Jefferson Parkway Public Highway Authority

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Action Items Item: 7D.
Presented By	
Nancy Rodgers, City and County Attorney	
Community Goals	

## Overview

[View Correspondence](#)

[View Presentation](#)

Proposed Resolution No. 2024-136, passed on Oct. 8, 2024, authorized the approval of the Withdrawal Agreement and exhibits which would result in Broomfield's withdrawal from the Jefferson Parkway Public Highway Authority (JPPHA). Proposed Ordinance No. 2251 is required to authorize the delayed transfer of real property contemplated by the Withdrawal Agreement. Ordinance No. 2251 was approved on first reading on Oct. 8, 2024. If approved on second reading, Ordinance 2251 combined with Resolution 2024-136 would effectuate Broomfield's withdrawal from the JPPHA, pending approval by the JPPHA board.

### Attachments

[Council Memo for JPPHA Withdrawal - PH and 2nd Reading.pdf](#)

[Ordinance 2251 - JPPHA Withdrawal Agreement - 2nd Reading.pdf](#)

## Summary

[View Correspondence](#)

[View Presentation](#)

This is the second reading of a land transfer ordinance related to Broomfield's withdrawal from the Jefferson Parkway Public Highway Authority ("JPPHA"). Council approved this ordinance on first reading on October 8, 2024, along with passing Resolution 2024-136 approving the Withdrawal Agreement and exhibits.

### Background on JPPHA

JPPHA was formed by the City and County of Broomfield, Jefferson County, and the City of Arvada on May 15, 2008, in order to build a parkway to connect Highway 128 in Broomfield to Highway 93 in unincorporated Jefferson County. The three parties then entered into an [Amended and Restated Establishing Contract](#) ("Establishing Contract") dated October 4, 2010. The JPPHA is a separate and distinct government entity with the three parties as the originating government units.

The parkway has been proposed to be constructed, in part, on the easternmost 300 feet of the Rocky Flats National Wildlife Refuge; JPPHA purchased this right-of-way from the federal government in 2011. The other land for the parkway is shown on [a proposed route map](#), with Broomfield's right-of-way marked with green highlights and the number 9. This is land between the Ridge neighborhood and the Great Western Reservoir, going to the intersection with Highway 128. [Another map](#) shows the specific right-of-way overlaid with the surrounding area.

### Background on the Withdrawal Dispute

Starting in December 2018 and throughout 2019, City Council held multiple meetings to discuss the parkway in general and to discuss the JPPHA's 2019 budget request of \$2.5 million from each party. Total payments at that time and to date by Broomfield to the JPPHA are \$3,453,333. City Council held multiple meetings and received community comments throughout most of 2019 from opponents and proponents for the parkway. In early 2019, City Council requested that the JPPHA conduct soil sampling along the ROW adjacent to Rocky Flats, which it did in mid-2019. One of the soil samples detected 264 pCi/g (picocuries per gram) of Plutonium (Pu) 239/240, which is more than five times the remediation standard from the Rocky Flats Closure Plan as stated in the [Closure Legacy Report](#). The location of this level of contamination in the parkway right-of-way caused the Broomfield City Council to reconsider its continuing participation in the JPPHA. Therefore, on February 25, 2020 and pursuant to the terms of the Establishing Contract, Council approved [Resolution No. 2020-82](#) giving notice of its intent to withdraw from the Jefferson Parkway Public Highway Authority. Notice was then sent to JPPHA the following day.

### The Establishing Contract and Negotiations

The Establishing Contract allows a party to withdraw from the JPPHA, but it requires that the JPPHA board, made up of two members from each of the three governing bodies, [unanimously consent](#) to the terms of withdrawal before a member is permitted to leave. Further, the Establishing Contract states that no "withdrawal shall be effective until and unless satisfactory provisions have been made to discharge all the obligations of the Authority, including any Bonds issued or assumed thereby, in a manner that will protect the rights and interest of the holders of such obligations."

In 2021 and into 2022, Broomfield, Arvada and Jefferson County, through their attorneys and on behalf of their respective clients, attempted to come to mutually agreeable terms of withdrawal that each party could consent to in order for Broomfield to withdraw from JPPHA. On June 1, 2022, Arvada and Jefferson County filed a lawsuit against Broomfield for breach of contract, among other claims, regarding Broomfield's request to withdraw from JPPHA. Broomfield filed a motion to dismiss the lawsuit. On November 2, 2023 the lawsuit was dismissed because it was not yet ripe. The Court found that JPPHA needed to meet, discuss the request to withdraw, decide what, if any, conditions for withdrawal would be asked of Broomfield, and give Broomfield a chance to comply with those conditions, before a lawsuit could be filed.

Negotiations continued as the lawsuit was pending and after it was dismissed. JPPHA Board meetings resumed on December 21, 2022. To date, the JPPHA board has not formally voted on Broomfield's request to withdraw, deferring a decision on Broomfield's withdrawal until the parties completed their negotiations. This proposed agreement and ordinance, if approved by City Council, Arvada, Jefferson County, and the JPPHA allows Broomfield to fully withdraw from the JPPHA and settles all outstanding disputes.

### Terms of the Agreement to Withdraw

Proposed Resolution No. 2024-136, approved on Oct 8, 2024, authorized the approval of the Withdrawal Agreement, subject to the passage of Ordinance No. 2251. In order for Broomfield to withdraw from the JPPHA and no longer be obligated to the parkway project, the proposed terms are:

- Transfer Broomfield's Right-of-way to JPPHA with a reversionary interest
  - Delayed transfer with 5 year escrow; property transfers at the end of the escrow period
  - Property transfers to JPPHA sooner if JPPHA enters into a construction agreement for the development of the parkway
  - Property reverts back to Broomfield:
    - if JPPHA is dissolved or the Establishing Contract is terminated; or
    - if, within 20 years, JPPHA does not enter into a construction agreement for the development of the parkway
  - Per state statute and the Broomfield Municipal Code, this transfer must be approved via ordinance (Ordinance 2251)
- Payment of \$636,175.34 to JPPHA
  - \$400,000 contribution for 2019 +
  - \$183,342 for one-third of the soil testing costs from 2019 +
  - \$52,833.34 for a 2023 contribution
  - Recall, in 2019, JPPHA had requested \$2.5 million
- Good faith permitting/approval decisions
  - Penalty applies if action found arbitrary or capricious; \$13.2m if project stopped; delay damages if delayed
- Agreed-upon Environmental Mitigation and Monitoring terms that includes:
  - Dust control
  - Air Quality Monitoring
  - Soil Sampling
  - Required cessation of work if an air sampling result or soil sample results hits a set level.
  - Monthly public reporting requirements and notice requirements if work is suspended because of a test result in excess of the set limits
- Update Reimbursement Agreement
  - It has been the intent of the JPPHA to obtain reimbursement for costs incurred in the development of the parkway from the selected partner. Reimbursement would be at a later

date once the facility has begun to generate a positive cash flow. Funds that the members advanced to JPPHA over the years will be reimbursed.

- This agreement updates Broomfield’s contributions to include the payment referenced above and the value of the land.

Proposed Ordinance No. 2251 authorizes the conveyance of real property contemplated by the Withdrawal Agreement and Escrow Agreement per the Special Warranty Deed.

## Financial Considerations

There is no specific financial consideration with the delayed transfer of the land, but there are financial considerations with the Withdrawal Agreement, approved by Resolution No. 2024-136

Sources and Uses of Funds	Amount
20-70130-55600-09C0028	\$583,340
Additional funding - Amendment 3 (Nov 2024)	\$52,835
<b>Contribution to the Jefferson Parkway Public Highway Authority</b>	
	<b>-\$636,175</b>
<b>Projected Balance</b>	<b>\$0</b>

## Prior Council or Other Entity Actions

December 11, 2018 - Jefferson Parkway [2019 Budget Discussion](#) (Study Session)

February 25, 2020 - [Resolution No. 2020-82](#) Giving Notice of Withdrawal from the JPPHA

October 8, 2024 - [Resolution No. 2024-136](#) Approving Withdrawal Agreement and Exhibits; First Reading of Ordinance 2251.

## Boards and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

If Council desires to approve the delayed land transfer to effectuate Broomfield’s final withdrawal from the JPPHA, the appropriate motion is...

**That Ordinance No. 2251 be adopted on second reading and be published by title.**

## Alternatives

Do not approve finalizing Broomfield’s withdrawal from the JPPHA by not approving Ordinance No. 2251. This will negate the vote on the Withdrawal Agreement, which only goes into effect if the ordinance passes. Provide direction to staff to either continue with negotiations on terms of withdrawal or revisit the February 2020 Resolution (No. 2020-82) to remain a member of the JPPHA.

# ORDINANCE NO. 2251

An ordinance authorizing the delayed conveyance of property via a special warranty deed and subject to the terms of an escrow agreement to Jefferson Parkway Public Highway Authority

## Recitals

Whereas, in 1985 the City of Broomfield, pursuant to [Resolution No. 7-85](#) purchased 314 acres of undeveloped land across two parcels from The Great Western Venture near The Great Western Reservoir for \$849,940 (the “Original Property”); and

Whereas, the deeds conveying the Original Property contained certain allowances for the land’s use including, among others, “highway or street or road rights-of-way”; and

Whereas, as part of its terms to withdraw from the Jefferson Parkway Public Highway Authority, Broomfield has agreed to convey a specific portion of the Original Property to JPPHA subject to the terms of a five-year escrow agreement, which is an exhibit to the Withdrawal Agreement; and

Whereas, the land to be conveyed is made up of two portions of Original Property, more specifically described in Exhibit A to this Ordinance; and

Whereas, section 2-74-030, B.M.C., requires the sale or disposition of Broomfield-owned buildings or real property not in use for public purposes to be authorized by ordinance and that at the public hearing and second reading of such ordinance the record shall reflect that such Broomfield-owned buildings or real property are not in use for a public purpose; and

Whereas, concurrent with this Ordinance, the City and County of Broomfield and the Jefferson Parkway Public Highway Authority have entered into an escrow agreement for the delayed conveyance of this property to the Jefferson Parkway Public Highway Authority.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

## Section 1.

Pursuant to Broomfield Municipal Code § 2-74-030, City Council finds and determines that the real property as described in Exhibit A attached hereto and incorporated herein by reference, is not in use for any public purpose.

**Section 2.**

Pursuant to Colorado Revised Statutes §§ 31-15-713(1)(b) and 38-30-141, and Broomfield Municipal Code § 2-74-030 and 2-74-050(A), the Mayor or Mayor Pro Tem is authorized to sign and the Office of the City and County Clerk to attest and seal, in form approved by the City and County Attorney, a special warranty deed conveying the real property described in Exhibit A to the Jefferson Parkway Public Highway Authority, such deed which will be held in escrow pursuant to the terms of an Escrow Agreement authorized by Resolution 2024-136.

**Section 3.**

The real property is set forth in Exhibit A to this ordinance.

**Section 4.**

This ordinance is effective seven days after publication following final passage and only if City Council approves Resolution No. 2024-136, approving a Withdrawal Agreement to include the above-referenced Escrow Agreement that finalizes Broomfield’s withdrawal from the Jefferson Parkway Public Highway Authority.

Introduced and approved after first reading on October 8, 2024, and ordered published in full.

Introduced a second time and approved on November 12, 2024, and ordered published.

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

## **Exhibit A.**

Description of the real property. The metes and bounds descriptions are on the following four pages.

### **RW-1**

A parcel of land (RW-1), being part of the tract of land situated in the southeast  $\frac{1}{4}$  of section 6, township 2 south, range 69 west of the sixth principal meridian, City and County of Broomfield, State of Colorado.

### **RW-2**

A parcel of land (RW-2), being part of the tract of land situated in the southeast  $\frac{1}{4}$  of section 6, township 2 south, range 69 west of the sixth principal meridian, City and County of Broomfield, State of Colorado.



# EXHIBIT A

A PARCEL OF LAND (RW-1), BEING A PART OF THAT TRACT OF LAND DESCRIBED IN THAT DOCUMENT RECORDED AT RECEPTION NO. 85063452 IN THE BROOMFIELD COUNTY CLERK AND RECORDER'S OFFICE, SITUATED IN THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY & COUNTY OF BROOMFIELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT A 3.25 INCH ALUMINUM CAP FOUND AT THE CENTER 1/4 CORNER OF SAID SECTION 6, THENCE ALONG THE EAST LINE OF SAID SOUTHWEST 1/4 SOUTH 00°41'34" WEST, A DISTANCE OF 27.72 FEET TO **THE POINT OF BEGINNING**;

THENCE CONTINUING ALONG SAID EAST LINE SOUTH 00°41'34" WEST, A DISTANCE OF 300.15 FEET;  
 THENCE SOUTH 88°53'20" WEST, A DISTANCE OF 597.53 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT;  
 THENCE ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 45°55'23", A RADIUS OF 2,050.00 FEET, AN ARC LENGTH OF 1,643.09 FEET,  
 AND A CHORD WHICH BEARS SOUTH 65°55'39" WEST, A DISTANCE OF 1,599.46 FEET;  
 THENCE SOUTH 29°43'48" WEST, A DISTANCE OF 454.51 FEET;  
 THENCE SOUTH 18°41'37" EAST, A DISTANCE OF 193.10 FEET;  
 THENCE SOUTH 01°24'12" WEST, A DISTANCE OF 280.15 FEET;  
 THENCE SOUTH 15°00'08" WEST, A DISTANCE OF 185.44 FEET;  
 THENCE SOUTH 25°27'25" WEST, A DISTANCE OF 321.24 FEET TO A POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT;  
 THENCE ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 25°48'32", A RADIUS OF 489.00 FEET, AN ARC LENGTH OF 220.27 FEET, AND A CHORD WHICH BEARS SOUTH 12°33'09" WEST, A DISTANCE OF 218.41 FEET;  
 THENCE SOUTH 00°21'07" EAST, A DISTANCE OF 76.05 FEET;  
 THENCE SOUTH 89°26'03" WEST, A DISTANCE OF 63.49 FEET TO THE EASTERLY RIGHT-OF-WAY OF INDIANA STREET;  
 THENCE ALONG SAID EASTERLY RIGHT-OF-WAY NORTH 00°33'57" WEST, A DISTANCE OF 1,482.65 FEET TO A NON-TANGENT CURVE TO THE RIGHT;  
 THENCE ALONG THE ARC OF SAID CURVE, HAVING A CENTRAL ANGLE OF 56°22'34", A RADIUS OF 2,350.00 FEET, AN ARC LENGTH OF 2,312.28 FEET, AND A CHORD WHICH BEARS NORTH 60°42'03" EAST, A DISTANCE OF 2,220.13 FEET;  
 THENCE NORTH 88°53'20" EAST, A DISTANCE OF 606.98 FEET TO **THE POINT OF BEGINNING**.

CONTAINING AN AREA OF 1,153,037 SQUARE FEET OR 26.470 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE EAST LINE OF THE SOUTHWEST 1/4 OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, WITH A GRID BEARING OF SOUTH 00°41'34" WEST BETWEEN THE CENTER 1/4 CORNER OF SAID SECTION 6, BEING MONUMENTED WITH A 3.25" ALUMINUM CAP STAMPED "ACCURATE PLS 37066 2005", AND THE SOUTH 1/4 CORNER OF SAID SECTION 6, BEING MONUMENTED WITH A 3.25" ALUMINUM CAP STAMPED "ACCURATE PLS 37066 2012", WITH ALL BEARINGS HEREIN RELATIVE THERETO.

CASEY C. PRIBBLE  
 COLORADO PLS 38793  
 FOR AND ON BEHALF OF  
 SURVWEST, LLC  
 (720)259-9316  
 6501 E. BELLEVIEW AVE, SUITE 300  
 ENGLEWOOD, CO 80111

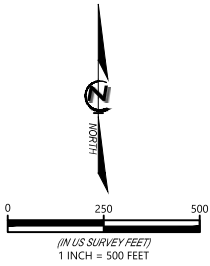


SURVWEST PROJECT NO.	P230047
ADD'L INFO:	
DRAWING NAME:	P230047-JPPHA Legal Exhibit SW
REVISION:	REV DESC:



A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M., CITY & COUNTY OF BROOMFIELD, STATE OF COLORADO				
TITLE: <b>PARCEL OF LAND RW-1</b>				
DWN:	CHK'D	DATE:	SCALE:	SHEET NO:
CP	RI	5/1/2023	N/A	1 OF 2

# EXHIBIT A



**PARCEL OF LAND RW-1**  
 1,153,037± SQ.FT.  
 (26.470± AC.)

**POINT OF COMMENCEMENT**  
 CENTER 1/4 CORNER OF  
 SECTION 6, T2S, R69W  
 FOUND 3.25" ALUMINUM CAP  
 STAMPED "ACCURATE PLS 37066 2005"

**S00°41'34"W 27.72' (TIE)**  
**POINT OF BEGINNING**

N88°53'20"E 606.98'

WEST 1/4 CORNER OF  
 SECTION 6, T2S, R69W  
 FOUND NO. 3 REBAR

N. LINE OF SW 1/4, SEC. 6, T2S, R69W, 6TH P.M.

Δ: 56°22'34"  
 R: 2,350.00'  
 L: 2,312.28'  
 CHB: N60°42'03"E  
 CHD: 2,220.13'

300.00'

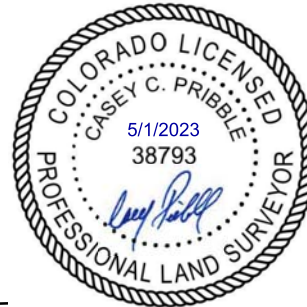
S88°53'20"W 597.53'

S00°41'34"W 300.15'

Δ: 45°55'23"  
 R: 2,050.00'  
 L: 1,643.09'  
 CHB: S65°55'39"W  
 CHD: 1,599.46'

GREAT WESTERN OPEN SPACE  
 REC. NO. 85063452, 7/7/1985  
 NOT PLATTED  
 APN: 171706300001

**SOUTHWEST 1/4,  
 SECTION 6,  
 T2S, R69W, 6TH P.M.**



E. LINE OF SW 1/4, SEC. 6, T2S, R69W, 6TH P.M.  
 S00°41'34"W 2,610.99' (BASIS OF BEARINGS)

**INDIANA ST**  
 (R/O/W WIDTH VARIES)

W. LINE OF SW 1/4, SEC. 6, T2S, R69W, 6TH P.M.

N00°33'57"W 1,482.65'

S29°43'48"W 454.51'

S18°41'37"E 193.10'

S01°24'12"W 280.15'

S15°00'08"W 185.44'

S25°27'25"W 321.24'

Δ: 25°48'32"  
 R: 489.00'  
 L: 220.27'  
 CHB: S12°33'09"W  
 CHD: 218.41'

S89°26'03"W 63.49'

S00°21'07"E 76.05'

S. LINE OF SW 1/4, SEC. 6, T2S, R69W, 6TH P.M.

SOUTHWEST CORNER OF  
 SECTION 6, T2S, R69W

SOUTH 1/4 CORNER OF  
 SECTION 6, T2S, R69W  
 FOUND 3.25" ALUMINUM CAP  
 STAMPED "ACCURATE PLS 37066 2012"

NOTE: THIS IS NOT A MONUMENTED SURVEY

SURVWEST PROJECT NO.	P230047
ADD'L INFO:	
DRAWING NAME:	P230047-JPPHA Legal Exhibit SW
REVISION:	REV DESC:



A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER  
 OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M.,  
 CITY & COUNTY OF BROOMFIELD, STATE OF COLORADO

TITLE: <b>PARCEL OF LAND RW-1</b>				
DWN:	CHK'D	DATE:	SCALE:	SHEET NO:
CP	RI	5/1/2023	1"=500'	<b>2 OF 2</b>

# EXHIBIT A

A PARCEL OF LAND (RW-2), BEING A PART OF THAT TRACT OF LAND DESCRIBED IN THAT DOCUMENT RECORDED AT RECEPTION NO. 85063451 IN THE BROOMFIELD COUNTY CLERK AND RECORDER'S OFFICE, SITUATED IN THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY & COUNTY OF BROOMFIELD, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

**COMMENCING** AT A 3.25 INCH ALUMINUM CAP FOUND AT THE CENTER 1/4 CORNER OF SAID SECTION 6, THENCE ALONG THE WEST LINE OF SAID SOUTHEAST 1/4 SOUTH 00°41'34" WEST, A DISTANCE OF 27.72 FEET TO **THE POINT OF BEGINNING**;

THENCE NORTH 88°53'20" EAST, A DISTANCE OF 2,292.49 FEET TO THE POINT OF CURVATURE OF A TANGENT CURVE TO THE LEFT; THENCE ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 07°49'04", A RADIUS OF 1,550.00 FEET, AN ARC LENGTH OF 211.49 FEET TO THE EAST LINE OF SAID SOUTHEAST 1/4, AND A CHORD WHICH BEARS NORTH 84°58'48" EAST, A DISTANCE OF 211.33 FEET; THENCE ALONG SAID EAST LINE SOUTH 00°10'17" EAST, A DISTANCE OF 302.96 FEET TO A NON-TANGENT CURVE TO THE RIGHT; THENCE ALONG SAID NON-TANGENT CURVE, HAVING A CENTRAL ANGLE OF 06°23'20", A RADIUS OF 1,850.00 FEET, AN ARC LENGTH OF 206.29 FEET, AND A CHORD WHICH BEARS SOUTH 85°41'40" WEST, A DISTANCE OF 206.19 FEET; THENCE SOUTH 88°53'20" WEST, A DISTANCE OF 2,301.94 FEET TO SAID WEST LINE; THENCE ALONG SAID WEST LINE NORTH 00°41'34" EAST, A DISTANCE OF 300.15 FEET TO **THE POINT OF BEGINNING**.

CONTAINING AN AREA OF 751,828 SQUARE FEET OR 17.260 ACRES, MORE OR LESS.

BASIS OF BEARINGS: BEARINGS ARE BASED ON THE WEST LINE OF THE SOUTHEAST 1/4 OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, WITH A GRID BEARING OF SOUTH 00°41'34" WEST BETWEEN THE CENTER 1/4 CORNER OF SAID SECTION 6, BEING MONUMENTED WITH A 3.25" ALUMINUM CAP STAMPED "ACCURATE PLS 37066 2005", AND THE SOUTH 1/4 CORNER OF SAID SECTION 6, BEING MONUMENTED WITH A 3.25" ALUMINUM CAP STAMPED "ACCURATE PLS 37066 2012", WITH ALL BEARINGS HEREIN RELATIVE THERETO.

CASEY C. PRIBBLE  
 COLORADO PLS 38793  
 FOR AND ON BEHALF OF  
 SURVWEST, LLC  
 (720)259-9316  
 6501 E. BELLEVIEW AVE, SUITE 300  
 ENGLEWOOD, CO 80111



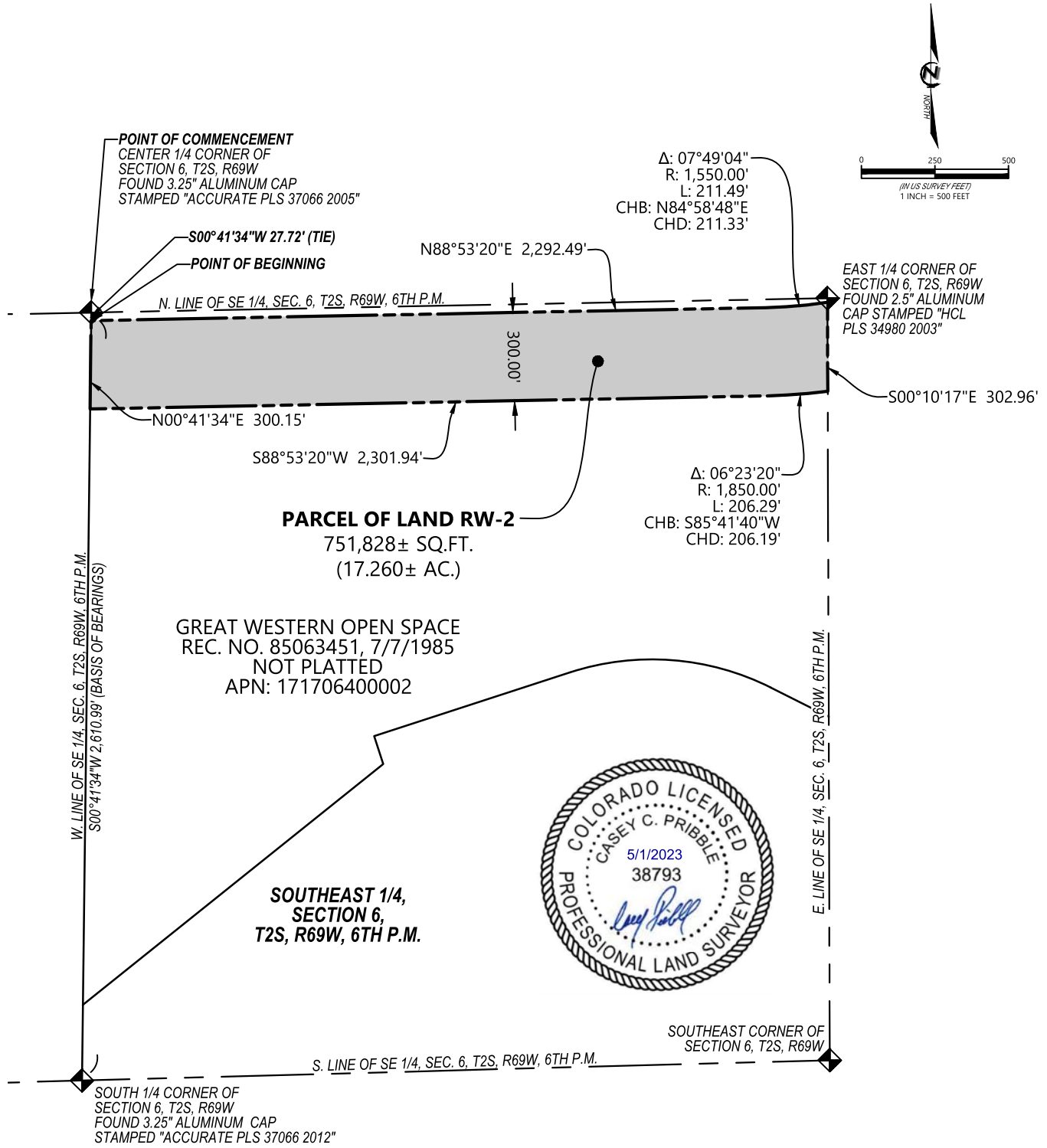
P:\P23 PROJECTS\230047 - JPPHA - JEFFERSON PARKWAY LEGAL EXHIBITS\CADD\230047 - JPPHA LEGAL EXHIBIT SEDWG C-PRIBBLE 5/1/2023 1:14 PM

SURVWEST PROJECT NO.	P230047
ADD'L INFO:	
DRAWING NAME:	P230047-JPPHA Legal Exhibit SE
REVISION:	REV DESC:



A PARCEL OF LAND LOCATED IN THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M., CITY & COUNTY OF BROOMFIELD, STATE OF COLORADO				
TITLE: <b>PARCEL OF LAND RW-2</b>				
DWN:	CHK'D	DATE:	SCALE:	SHEET NO:
CP	RI	5/1/2023	N/A	1 OF 2

# EXHIBIT A



NOTE: THIS IS NOT A MONUMENTED SURVEY

SURVWEST PROJECT NO.	P230047
ADD'L INFO:	
DRAWING NAME:	P230047-JPPHA Legal Exhibit SE
REVISION:	REV DESC:

720.259.9316      6501 E Bellevue Ave, Suite 300  
www.survwest.com      Englewood, CO 80111

A PARCEL OF LAND LOCATED IN THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 2 SOUTH, RANGE 69 WEST OF THE 6TH P.M., CITY & COUNTY OF BROOMFIELD, STATE OF COLORADO				
TITLE: <b>PARCEL OF LAND RW-2</b>				
DWN:	CHK'D	DATE:	SCALE:	SHEET NO:
CP	RI	5/1/2023	1"=500'	<b>2 OF 2</b>



**E. Public Hearing - Ordinance for Residential Occupancy Second Reading**

Meeting	Agenda Group
Tuesday, November 12, 2024, 6:00 PM	Action Items Item: 7E.
Presented By	
Lynn Merwin	
Community Goals	
<input checked="" type="checkbox"/> Thriving, Diverse, Safe and Welcoming Community	

## Overview

[View Correspondence](#) and visit [BroomfieldVoice.com](http://BroomfieldVoice.com)  
[View Presentation](#)

Staff is bringing forth an ordinance that proposes to amend Title 17, Zoning of the Broomfield Municipal Code, to remove occupancy restrictions based on familial status.

### **Attachments**

[Ordinance No. 2241 2nd Reading Council Memo.pdf](#)

[Ordinance No. 2241 Related to Residential Occupancy 2nd Reading.pdf](#)

## Summary

[View Correspondence](#) and visit [BroomfieldVoice.com](http://BroomfieldVoice.com)  
[View Presentation](#)

Staff is bringing forth an ordinance that proposes to amend Title 17, Zoning of the Broomfield Municipal Code, to remove occupancy restrictions based on familial status.

During the 2024 legislative session, the Colorado legislature passed the HOME (Harmonizing Occupancy Measures Equitably) Act ([HB24-1007](#)). The HOME Act is the state's effort to prohibit local governments from imposing occupancy limits based on the premise that occupancy limits increase availability of housing under the argument that the legislation is a matter of mixed statewide and local concern.

Broomfield maintains the regulation of occupancy restrictions and the availability of affordable housing are matters of local concern.

Our community is diverse and Broomfield accepts that people may desire to live together in traditional and non-traditional living arrangements. In an effort to be inclusive and to increase the affordability of housing within Broomfield and to exercise local authority on occupancy, the proposed ordinance would remove the restrictions on regulating the number of persons living in a dwelling based on familial relationships.

On [July 2, 2024](#), a study session was held to provide an overview of areas in the Broomfield Municipal Code that could be revised to meet the requirements of the HOME Act (HB24-1007), and provide recommendations on changes to the Broomfield Municipal Code.

If approved, Ordinance No. 2241 would make the following changes to the Broomfield Municipal Code:

- Provide new terms of single-unit dwelling and multi-unit dwelling that can be used interchangeably with single-family dwelling and multi-family dwelling to make it clear Broomfield is not requiring familial relationships to reside in a dwelling in Broomfield.
- Specify that use of the term “family” within the zoning code does not necessarily mean familial relationship among household members.
- Clarify that a Group Living Home is a separate use with different standards than a single-unit dwelling and clarify that Group Living Homes are a permitted use where single-unit dwellings are permitted.

On [October 1, 2024](#), staff presented proposed Ordinance No. 2241 for first reading, and council approved the ordinance on first reading and scheduled a public hearing and second reading.

Proposed Ordinance No. 2241 if adopted on second reading would approve the proposed changes to the Broomfield Municipal Code.

## Financial Considerations

The amendments proposed by this ordinance will not impact fees or other mechanisms for collecting revenue for the City and County of Broomfield.

## Prior Council or Other Entity Actions

[November 12, 2019](#) - City Council approved [Ordinance No. 2106](#) regarding updates to the Municipal Code in regard to Household Group Living Facilities in response to HB19-1009.

[April 16, 2019](#) - City Council held a study session in regard to “Sober Living Homes”.

[July 2, 2024](#) - City Council held a study session in regard to the HOME Act (HB24-1107) and the implications for Broomfield’s residential occupancy regulations.

[October 1, 2024](#) - City Council approved Ordinance No. 2241 on first reading.

## Board and Commissions Prior Actions and Recommendations

N/A

## Proposed Actions / Recommendations

Based on the above, is recommended that Council approves the ordinance and the appropriate motion is:

That Ordinance No. 2241 be adopted on second reading and be published by title.

## Alternatives

Make no changes to the Broomfield Municipal Code. This is not recommended due to the HOME Act and state law requirement on occupancy.

## Project Website

[www.broomfieldvoice.com/residential-occupancy](http://www.broomfieldvoice.com/residential-occupancy)

## Public Comment

[Correspondence Folder](#)

## How to Submit Public Comments on this Proposal

Email directly to [planning@broomfield.org](mailto:planning@broomfield.org)

## Staff Memorandum from the First Reading

The [staff memorandum from the first reading of Ordinance No. 2241](#) on October 1, 2024 includes a detailed discussion of the proposed code changes.

## Public Engagement

A [Broomfield Voice page](#) has been created and provides information regarding the proposed amendments included in this proposed ordinance. The Broomfield Voice platform allows for feedback on the proposed amendments to the Broomfield Municipal Code, and community engagement is encouraged. Comments received will be gathered and summarized to provide feedback as part of the public hearing process. Additional public comments can be provided during the public hearing.

## Ordinance No. 2241

Proposed Ordinance No. 2241 amends Title 17, Zoning of the Broomfield Municipal Code, to remove occupancy restrictions based on familial status. If approved on second reading, proposed Ordinance No. 2241 will be published by title, and will become effective 7 days after publication.



**Bold type** indicates new material to be added to the Broomfield Municipal Code  
~~Strikethrough type~~ indicates deletions from the Broomfield Municipal Code

## **ORDINANCE NO. 2241**

An ordinance to amend the Broomfield Municipal Code, Title 17, to remove occupancy restrictions based on familial status

### **Recitals.**

Whereas, the Colorado State legislature adopted the Harmonizing Occupancy Measures Equitably Act (the “HOME Act”), also referred to as HB24-1007, during the 2024 legislative session;

Whereas, the HOME Act prohibits local governments from imposing occupancy limits based on the premise that occupancy limits and the increased availability of housing are a matter of mixed statewide and local concern;

Whereas, Council disagrees with the state’s preemption in this area, and finds and declares that occupancy limits and the availability of housing are a matter of local concern;

Whereas, Council acknowledges that the HOME Act was passed, has been in effect since July 1, 2024, and has not to date been challenged in court;

Whereas, separate from the preemptive prohibition imposed by the HOME Act, Council recognizes that our community is diverse and that Broomfield accepts that people may desire to live together in traditional and non-traditional living arrangements; and

Whereas, in an effort to be inclusive and to increase the affordability of housing within Broomfield and to exercise local authority on occupancy, Council desires to remove the restrictions on regulating the number of persons living in a dwelling based on familial relationships.

Now, therefore, be it ordained by the City Council of the City and County of Broomfield, Colorado:

### **Section 1.**

Chapter 17-04, Definitions, of the Broomfield Municipal Code is amended as follows:

17-04-090 - Dwelling, multiple-family unit.

~~Multiple-family unit dwelling means a building occupied by two or more persons families living independently of each other in separate dwelling units with a minimum floor area of 500 square feet per unit (including balconies), but not including hotels or motels. A multiple-unit dwelling may also be known as multi-family dwelling units, multiple-family dwelling units, duplexes, triplexes, fourplexes, condominiums, apartment buildings or similar multiple dwelling unit arrangements.~~

17-04-095 - Dwelling, ~~one-family~~single-unit.

~~One-family Single-unit dwelling means a detached building, arranged and designed as a single dwelling unit structure, other than a mobile home, and used exclusively by not more than one family, household group living facility or household group, which has not less than one bathroom and a minimum floor area of 850 square feet, unless otherwise specified within the appropriate zone district. A single-unit dwelling may also be known as a one-family dwelling unit, single dwelling unit, or a single-family dwelling.~~

17-04-100 - Dwelling unit.

~~Dwelling unit means one or more rooms, including at least one single kitchen, designed for or occupied as a unit by one family for living and cooking purposes, located in a one-family or multiple-family dwelling, any building or portion thereof which contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, except that any individual dwelling unit may not include more than one individual who is required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., unless related by marriage or consanguinity. A dwelling unit may be further described as either attached or detached, and single-unit or multiple-unit. This includes both buildings constructed on-site and manufactured homes. A dwelling unit does not include hotels or motels. Maximum occupancy of a dwelling unit shall not exceed any of the following:~~

- ~~a. The number of individuals permitted by the Onsite Wastewater Treatment System (OWTS) Regulations, as applicable.~~
- ~~b. The number of individuals that can be accommodated based on the adopted Building and Fire Codes, as applicable.~~

~~...~~

~~17-04-130 Family:~~

~~(A) Family means any one of the following:~~

- ~~(1) One person living alone;~~
- ~~(2) Two or more persons all of whom are related by blood, marriage, or legal adoption, together with up to four children who may not be~~

~~related to any or all of the other residents but who are under the care and supervision of the adult family head; or~~

~~(3) A group including not more than two adults, together with any number of children, related by blood or legal adoption to at least one of the adults.~~

~~(B) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.~~

~~(C) A family shall not include more than one person required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S., unless related by marriage or consanguinity. Family shall not include any group of individuals who are in a group living arrangement as a result of criminal offenses.~~

...

#### ~~17-04-202 -- Household group.~~

~~(A) Household group means any one of the following, provided that there is at least 400 square feet of finished interior space for each resident:~~

~~(1) A group not exceeding three persons living together as a single housekeeping unit, such group to be distinguished from a group occupying a boarding house, lodging house, club, fraternity, or hotel, except that such a household group may not include more than one individual who is required to register as a sex offender pursuant to Section 18-3-412.5, C.R.S.;~~

~~(2) Two or more persons all of who are related by blood, marriage, or legal adoption, together with not more than one adult boarder or domestic worker.~~

~~(B) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.~~

~~(C) As used in this section, finished interior space includes any room with:~~

~~(1) Floor completely covered (except for heating, cooling, or ventilation grilles, cabinets, plumbing fixtures, and appliances), with one or more of the following materials: ceramic or vinyl tile, vinyl sheet goods, cork, rock, brick, carpeting, or finished wood flooring;~~

~~(2) Walls completely covered (except for doors, windows, cabinets, electrical outlets, plumbing fixtures, appliances, and heating and ventilation grilles) with one or more of the following materials: painted or wall papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, cork, rock, or brick; and~~

~~(3) Ceiling completely covered (except for light fixtures, skylights, and heating, cooling, or ventilation grilles) with one or more of the following materials: painted or wall papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, or acoustical panels.~~

~~(D) As used in this section finished interior space does not include areas with exposed studs, joists, or plain concrete.~~

~~Household-Group Living Facility~~**Home** means any one of the following, provided that there is at least 400 square feet of finished interior space for each resident: any single unit dwelling, duplex or paired home where accommodations and care (including but not limited to, supervision, guidance, counseling, medical or other services) are provided to persons. Typically people in a group living home are living with physical or mental disabilities, persons under the age of 18 years living apart from their parents or guardians, elderly, or persons in emergency or crisis situations. Group living home includes, but is not limited to, residential treatment or training home, home based residential care facilities, adult foster home, recovery residence, or similar facilities.

- ~~(A) A group of more than three, but not more than eight developmentally disabled persons living in a state-licensed group home or community-based residential facility for the developmentally disabled;~~
- ~~(B) A group of more than three, but not more than eight persons in an owner-occupied or nonprofit group home for the exclusive use of persons sixty years of age or older, together with domestic workers; or~~
- ~~(C) A group of more than three, but not more than eight persons with mental illness living in a state-licensed group home for persons with mental illness, subject, however, to limitations on such homes provided by state law.~~
- ~~(D) A group of more than three, but not more than eight persons who are handicapped within the meaning of the Federal Fair Housing Act (FHA).~~
- ~~(E) As used in this section, an adult means a person eighteen or older, and child means a person under the age of eighteen.~~
- ~~(F) As used in this section, finished interior space includes any room with:
  - ~~(1) Floor completely covered (except for heating, cooling, or ventilation grilles, cabinets, plumbing fixtures, and appliances), with one or more of the following materials: ceramic or vinyl tile, vinyl sheet goods, cork, rock, brick, carpeting, decorative concrete or finished wood flooring;~~
  - ~~(2) Walls completely covered (except for doors, windows, cabinets, electrical outlets, plumbing fixtures, appliances, and heating and ventilation grilles) with one or more of the following materials: painted or wall-papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, cork, rock, decorative concrete or brick; and~~
  - ~~(3) Ceiling completely covered (except for light fixtures, skylights, and heating, cooling, or ventilation grilles) with one or more of the following materials: painted or wall-papered gypsum board or plaster, stucco, wood or composite panelling, ceramic or vinyl tile, vinyl sheet goods, or acoustical panels.~~~~
- ~~(G) As used in this section finished interior space does not include areas with exposed studs, joists, or plain concrete.~~
- ~~(H) As used in this chapter, Recovery Residence means any premises, place, facility, or building that provides housing accommodation for individuals with a primary diagnosis~~

~~of a substance use disorder that: (1) is free from alcohol and non-prescribed or illicit drugs; (2) promotes independent living and life skill development; and (3) provides structured activities and recovery support services that are primarily intended to promote recovery from substance use disorders.~~

## Section 2.

Chapter 17-33, Household Group Living Facilities, of the Broomfield Municipal Code is amended as follows:

### Chapter 17-33 - ~~Household-Group Living Facilities~~Homes

#### 17-33-010 - Definitions.

- (A) Good Neighbor Policy. A document that outlines the rules that the owner(s) of the ~~household~~ group living ~~facility~~home, licensee, certificate holder, managers and residents must follow as it pertains to interaction with the neighborhood. At a minimum the policy must include:
  - (1) Policies and procedures providing neighbors with a designated responsible person's contact information upon request;
  - (2) Policies and procedures that require the responsible person to respond to the neighbor's concerns;
  - (3) Resident and staff orientations that include how to greet and interact with neighbors and concerned parties;
  - (4) Policies that minimize negative impacts, including but not limited to:
    - (a) Smoking
    - (b) Cleanliness of the property
    - (c) Parking for residents and guests
- (B) House Rules, Policies and Procedures. A document setting forth the house rules and policies and procedures that includes consequences for violations of the rules and at a minimum states each of the following:
  - (1) The residents' rights and grievance procedures
  - (2) Prohibits the use of alcohol and illicit drugs - in a Recovery Residence
  - (3) Lists prohibited items
  - (4) Smoking prohibitions or designated areas for smoking
  - (5) Visitor policies
  - (6) Admission and discharge criteria
  - (7) Emergency preparedness procedures
- (C) Responsible person. A person who either has ownership in the ~~household~~-group living ~~facility~~home or has been given management authority by the owner of the ~~household~~-group living ~~facility~~home and has the authority and responsibility to take action to address and alleviate the concerns of the residents and concerns of the neighborhood as they relate to house residents, house rules and house impacts on the neighborhood.

17-33-020 - Generally applicable regulations.

- (A) Unless otherwise expressly stated, all ~~household~~ group living facilities ~~homes~~ shall be subject to the following standards:
- (1) Licensing/certification. If required by state law, the ~~household~~ group living facility ~~home~~ is licensed or certified by the State of Colorado to operate such facility.
  - ~~(2) Registration with the city. All state licensed or state certified household group living facilities must register with the city manager or his or her designee before operating the facility in the city. The registration must include a copy of the state issued license or certification and a copy of the application provided to the state.~~
    - ~~(a) The owner of any household group living facility must notify the city manager or his or her designee of any changes to the status of a state issued license or certification in writing, within ten days of the change.~~
    - ~~(b) Facilities that are legally operating in Broomfield on the date this law goes into effect will have sixty days to register and provide documentation to the city.~~
  - (3) Dispersal policy. In order to prevent the concentration and encourage better integration into neighborhoods of ~~household~~ group living facilities ~~homes~~, no two ~~household~~ group living facilities ~~homes~~ may be located within 750 feet of each other. The community development department shall therefore find that there is no other ~~household~~ group living facility ~~home~~ located within 750 feet of the proposed household group living facility.
  - (4) Threats to public safety. No ~~household~~ group living facility ~~home~~ shall provide housing to any individual who constitutes a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical danger to the property of others.
  - (5) Group living facilities are permitted in all residential, agricultural and estate zone districts, including planned unit development districts that contain a residential component, within the city.

17-33-025 - Regulations applicable to group living homes licensed or certified by the State of Colorado.

- (A) Registration with the city. All state licensed or state certified group living homes must register with the city manager or their designee before operating the facility in the city. The registration must include a copy of the state issued license or certification and a copy of the application provided to the state, as applicable, otherwise the application process set forth in B.M.C. 17-33-030 shall be completed.

- (B) The owner of any group living home must notify the city manager or their designee of any changes to the status of a state issued license or certification in writing, within ten days of the change.

17-33-030 - Regulations applicable to ~~household~~ group living facilities ~~homes~~ not licensed or certified by the State of Colorado.

- (A) It shall be unlawful for any ~~household~~ group living facility ~~home~~ that is not licensed or certified by the State of Colorado, to operate within the City and County of Broomfield without first obtaining a valid permit through the city manager or his or her designee. Denial of a license or certification by the State of Colorado shall be grounds for denial of a permit by the city.
- (B) Application for permit: Any owner or authorized agent who intends to open a ~~household~~ group living facility ~~home~~ in the city must first submit an application to the city and pay all required fees. Contents of the application shall be incorporated in and become requirements of the permit.
  - (1) A written application shall be submitted on a form furnished by the city. The application shall provide:
    - (a) The permanent address, the telephone number, and email address of the owner of the ~~household~~ group living facility ~~home~~. If the owner is an individual, a copy of ~~his/her~~ their state issued identification must be provided.
    - (b) Documentation of the legal business entity showing that it is in good standing with any Secretary of State where it is registered, including Colorado, as well as any DBA [doing business as] names.
    - (c) Evidence of written permission from the property owner of record to operate a ~~household~~ group living facility ~~home~~ on the property. If the property owner is not the same person as the applicant or ~~household~~ group living facility ~~home~~ owner, provide the name, street address, email address and telephone number of the property owner.
    - (d) The legal and physical description of the property where the residence will be located including a clearly legible floor plan of the ~~household~~ group living facility ~~home~~ that includes the total square footage of the home, the layout, location, dimensions, and square footage of each bedroom, and the number of beds in each bedroom.
    - (e) The maximum number of residents proposed to occupy the ~~household~~ group living facility ~~home~~.
    - (f) The name under which the ~~household~~ group living facility ~~home~~ will be doing business and the URL of any website or advertisement for the ~~household~~ group living facility ~~home~~.

- (g) A list of any prior ~~household~~ group living ~~facility~~home permits applied for in the city and the status of each.
  - (h) A list of any other cities where the applicant currently has active ~~household~~ group living ~~facilities~~homes and the status of any license or permit required for each residence.
  - (i) A description of the intended use of the residence.
  - (j) A certification by a third party home inspection service that electrical, mechanical, and structural components of the property are functional and free of fire and safety hazards.
  - (k) A safety inspection policy requiring semi-annual verification of: functional smoke detectors in all bedroom spaces and elsewhere as needed, functional carbon monoxide detectors, functional fire extinguishers placed in plain sight or in clearly marked locations, regular inspections of smoke detectors, carbon monoxide detectors and fire extinguishers.
  - (l) A copy of the house rules and regulations and procedures for amending them.
  - (m) A copy of the good neighbor policy and procedure for amending it.
  - (n) Proof of adequate general liability insurance showing the ~~household~~ group living ~~facility's~~ home's owner's name and the group living ~~facility's~~ home's address as a covered property under the policy.
- (C) Action on application. The city manager or ~~his or her~~their designee shall examine or cause to be examined applications for permits and amendments thereto. If the city is satisfied that the subject residence conforms to the requirements of this code and other applicable laws and ordinances, the city shall timely issue a permit.
- (D) Timing on application: an application for a permit for a ~~household~~ group living ~~facility~~home shall be deemed to have been abandoned 180 days after the date of filing, unless the applicant has pursued the application in good faith or a permit has been issued.
- (E) Fees:
- (1) The fee for a permit shall be set by the city manager or ~~his or her~~their designee to cover the city's cost of administration of this chapter.
  - (2) An applicant shall pay the permit fee when the application is filed.
  - (3) As part of the annual budget process, permit fees charged by the city shall be reviewed and, if necessary, adjusted to reflect the direct and indirect costs incurred by the city in connection with the adoption, administration and enforcement of this chapter.
- (F) Any ~~household~~ group living ~~facility~~home legally operating in the city of Broomfield on the date that this law goes into effect will have sixty days from the effective date of the law to file an application for the required permit. If



the application is timely filed, the ~~household~~ group living ~~facility~~home will be permitted to continue to operate without a permit until either, a valid permit is issued by the city or a denial of the permit application is determined by the city.

17-33-040 - Permit.

- (A) Term: A permit shall be valid for a two year term or for 180 days from the issuance of the permit if the ~~household~~ group living ~~facility~~home has not begun admitting residents.
- (B) Renewal: A renewal application for a permit set to expire shall be filed, with the required fee, no later than forty-five days prior to the date of expiration. A permit does not guarantee or vest any right to a renewed permit in the permittee.
- (C) Suspension or revocation: The city manager or ~~his or her~~their designee is authorized to suspend or revoke a permit issued under the provisions of this code for any of the following reasons:
  - (1) Wherever the permit is issued in error or on the basis of incorrect, inaccurate, or incomplete information, or in violation of any state or federal statute, ordinance or regulation or any provision of this code.
  - (2) Wherever the ~~household~~group living facility is non-compliant with the terms of the permit or is non-compliant with the Broomfield Municipal Code or any state or federal law.
- (D) Any suspension or revocation will be communicated to the ~~household~~group living ~~facility~~home in writing stating the reasons for the suspension or revocation. In the case of a suspension, the city will include the issues that must be remedied before the suspension will be lifted and the time frame that those requirements must be met.
- (E) Appeal of suspension or revocation: A final decision of the city may be appealed to the board of adjustment.
- (F) Placement of permit: The permit, good neighbor policy and the house rules shall be posted in a prominent location in the entryway of the ~~household~~group living ~~facility~~home so that it may be read at any time.

## Section 4.

This ordinance is effective seven days after publication following final passage.

Introduced and approved after first reading on October 1, 2024, and ordered published in full.

Introduced a second time and approved on November 12, 2024, and ordered published.

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