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MEMORANDUM

To: Linda Kiefer, EPA Project Manager
Amelia Piggott, Esq. EPA Legal Counsel

From: Eugene J. Riordan

Through: Dave Wilmoth, Steve Richtel, and Tim Shangraw

Copy to: Lee Zarzeki and Catherine Riegle Finley

Date: June 18, 2020

Re: Classifications, standards, and likely uses of the surface water in Murphy Creek and the groundwater in and underlying the North End Plume

The purpose of this memorandum is to summarize the classifications and standards of Murphy Creek surface water, and the groundwater in and underlying the North End Plume; and to explain the unavailability of this surface and groundwater for a new private water system including, without limitation, how Aurora would restrict the development of a new private water system with groundwater that is in or that underlies the North End Plume.

A. Murphy Creek

1. Classifications and Standards.

Murphy Creek is a tributary of Sand Creek, which is in turn tributary to the South Platte River. Murphy Creek is a part of Segment 16C of the Upper South Platte River Basin described as:

All tributaries to the South Platte River, including all wetlands, from the outlet of Chatfield Reservoir, to a point immediately below the confluence with Big Dry Creek, except for specific listings in the subbasins of the South Platte River, and in Segments 16a, 16d, 16e, 16f, 16g, 16h, 16i, 16j, and 16k.

See Colorado Water Quality Control Commission (“Commission”) Regulation #38 (5 CCR 1002-38) at COSPUS16C. The use classifications for this segment are limited to: Agriculture, Aquatic Life Warm Class 2, and Recreation E. See Segment 16C Description

Sheet attached hereto as **Exhibit A**. Murphy Creek is not classified for water supply use.¹

As a consequence of Murphy Creek not being classified for water supply, there is no 1,4 dioxane standard for Murphy Creek. *See* Commission Regulation #31 at Section 31.11(3), Basic Standards for Organic Chemicals Table, and footnote 2 to that table (listed standards are only applicable to segments classified for water supply).

2. Availability of Murphy Creek water for water supply use.

The absence of a water supply use classification for Murphy Creek is significant because waters of the state “shall be classified for the present beneficial uses of the water, or the beneficial uses that may be reasonably expected in the future for which the water is suitable in its present condition or the beneficial uses for which it is to become suitable as a goal.” *See* Commission Regulation #31 (5 CCR 1002-31) at Section 31.6 (emphasis added). Concluding that Murphy Creek is neither currently used for water supply nor reasonably expected to be used for water supply is not surprising given the limited physical and legal supply of water. That is, the creek is ephemeral with water flows generally appearing only in response to snow melt or thunderstorm events. Further, since that episodic runoff is generally required by other water rights appropriators within the already over-appropriated South Platte River Basin, it would be difficult to capture that runoff for a water supply use.

B. Ground water underlying the North End Plume

1. Classifications and Standards.

The areal extent of the North End Plume is shown on **Exhibit B** attached hereto. Neither site-specific use classifications nor site specific numeric standards have been assigned to groundwater in any of the water bearing formations in or underlying the North End Plume. *See* Commission Regulation #42 (5 CCR 1002-42), Site-Specific Water Quality Classifications and Standards for Ground Water. Thus, any groundwater in those formations would be subject to an “interim organic pollutant standard” for 1,4 dioxane of .35 µ/L. *See* Commission Regulation #41 (5 CCR 1002-41), Basic Standards for Groundwater, at Section 41.5.C.3 Table A. This standard is not directly applicable in the

¹ Note that the stream segment immediately downstream of Segment 16C is 16A which is described as the “Mainstem of Sand Creek from the confluence of Murphy and Coal Creek in Arapahoe County to the confluence with the Toll Gate Creek.”

North End Plume, however, since the 1,4 dioxane practical quantitation limit for the Site is .9 µ/L.

2. Availability of groundwater underlying the North End Plume for water supply use.

It appears from Google Maps that the North End Plume (from Yale Avenue north) lies wholly within the corporate limits of the City of Aurora ("City"). All properties within the City limits are regulated by City Code Section 138-154(a) attached hereto as **Exhibit C**. That section effectively prohibits the development of any private water supply that will be used within the City limits without the written approval of the City's water director. Thus, no person could withdraw any groundwater in or underlying the North End Plume for domestic use purposes within the City limits without the City's permission. Such permission is unlikely given the City's general policy to provide water service to properties within the City. *See, e.g.,* City's form Annexation Agreement attached hereto as **Exhibit D** at Section 3.2.

Exhibit B also shows two existing private wells located on properties in unincorporated Arapahoe County – one owned by 23345 Jewell LLC (referred to as the [REDACTED] Property and Well because [REDACTED] is the registered agent) and one owned by [REDACTED] [REDACTED] (referred to as the [REDACTED] Property and Well). According to the well permits: (a) these wells were drilled in 1964 [REDACTED] and 1970-71 ([REDACTED]) – before adoption in 1979 of the original version of City Code Section 138-154; and (b) the groundwater developed from the wells was limited to "domestic" uses. Although not stated in the well permits, it appears that the domestic use of the water has been limited to the residences at the [REDACTED] and [REDACTED] Properties. Since both those properties are outside the City limits, none of the groundwater withdrawn from the wells has ever been "use[d] within the city limits." Thus, use of groundwater withdrawn from these wells can continue but such use is limited to the historic permitted uses on the respective private properties; the groundwater withdrawn can never be used within the City limits. *See* City Code Section 138-154(b).

Further, as shown on Exhibit B (which is based on the most current data), the [REDACTED] and [REDACTED] Wells are located outside of the North End Plume and, given their depth, draw water from the Denver aquifer, which is not affected by the North End Plume. Also, the WSDs sample those wells on a regular basis and, to date, no 1,4 dioxane has been detected in them at a maximum detection limit down to 0.15 ug/L, which is less than half of the interim groundwater standard of .35 µ/L.

Additionally, it is likely that use of the [REDACTED] and [REDACTED] Wells will eventually cease when their properties (which are surrounded by the City) are annexed into the City limits given the City's form Annexation Agreement attached hereto as **Exhibit D**. Sections 3.6 and 3.7 of the Form Annexation Agreement require the Annexor to deed over "the non-tributary and not non-tributary water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers that lie beneath Annexor's Property." *See also* Special Warranty Deed Form attached to form Annexation Agreement. As noted above, the [REDACTED] and [REDACTED] Wells draw water from the Denver aquifer. It should be noted that the Form Annexation Agreement is part of Aurora's 2020 Annexation Process Manual and, pursuant to Aurora's Uniform Development Ordinance ("UDO"), all annexations "shall be consistent" with that Manual. *See* UDO at Section 146-5.4.1(B)(2)(b).

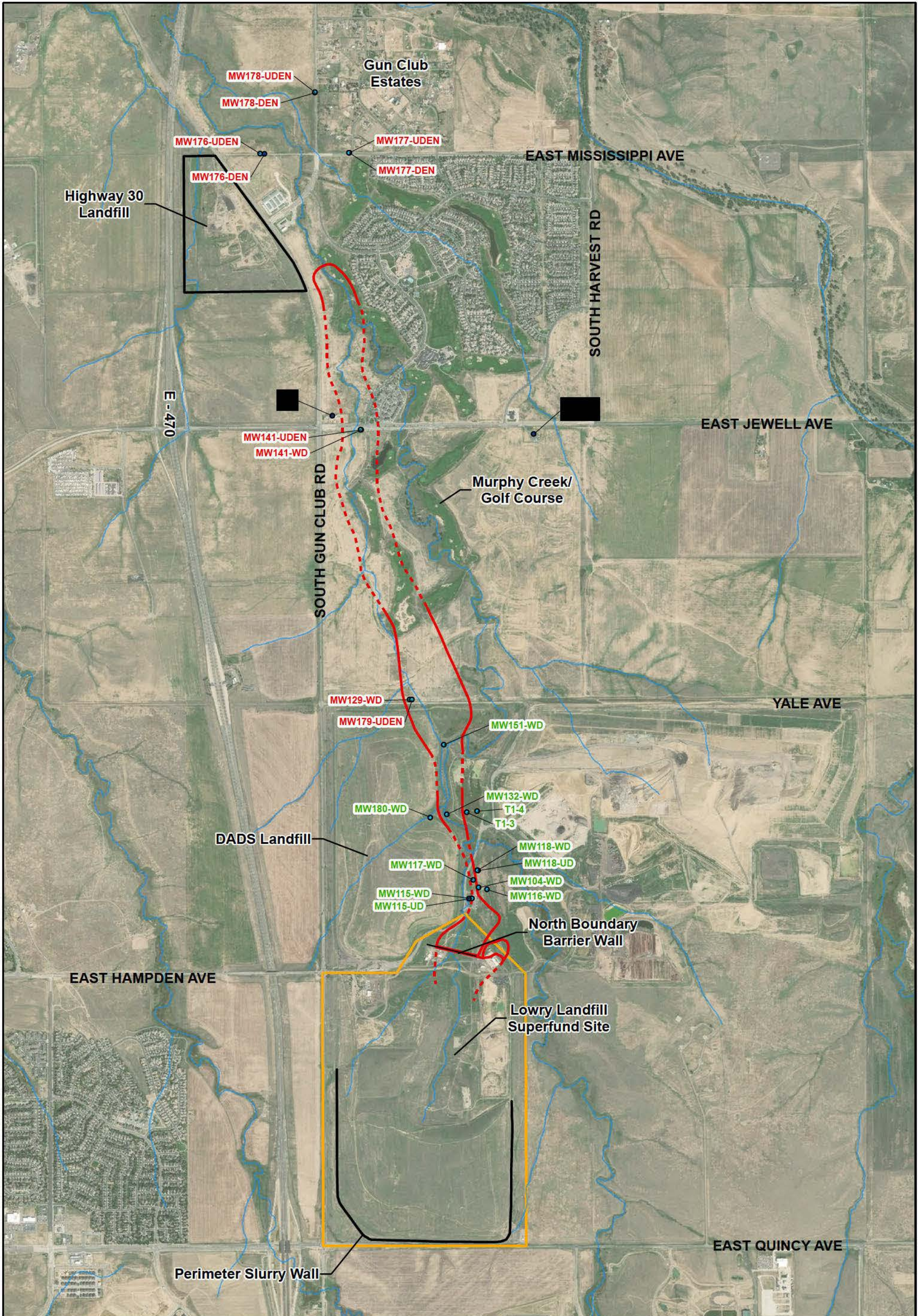
**REGULATION #38 STREAM CLASSIFICATIONS and WATER QUALITY STANDARDS
Upper South Platte River Basin**

16b. Aurora Reservoir.						
COSPUS16B Classifications		Physical and Biological			Metals (ug/L)	
Designation	Agriculture Aq Life Warm 1 Recreation E Water Supply DUWS	DM	MWAT		acute	chronic
Reviewable			WL	WL	Temperature °C	---
		acute	chronic			
		---	5.0	D.O. (mg/L)	---	0.02
		6.5 - 9.0	---	pH	---	---
Qualifiers:		---	---	chlorophyll a (ug/L)	TVS	TVS
Other:		---	126	E. Coli (per 100 mL)	5.0	---
Temporary Modification(s):		Inorganic (mg/L)			---	TVS
Arsenic(chronic) = hybrid		acute	chronic			
Expiration Date of 12/31/2021		TVS	TVS	Ammonia	TVS	TVS
		---	0.75	Boron	TVS	TVS
		---	250	Chloride	---	WS
		0.019	0.011	Chlorine	---	1000
		0.005	---	Cyanide	TVS	TVS
		10	---	Nitrate	50	---
		---	0.5	Nitrite	TVS	TVS/WS
		---	---	Phosphorus	---	0.01(t)
		---	WS	Sulfate	---	150
		---	0.002	Sulfide	TVS	TVS
				Nickel	---	100
				Nickel(T)	TVS	TVS
				Selenium	TVS	TVS
				Silver	TVS	TVS
				Uranium	---	---
				Zinc	TVS	TVS

16c. All tributaries to the South Platte River, including all wetlands, from the outlet of Chatfield Reservoir, to a point immediately below the confluence with Big Dry Creek, except for specific listings in the subbasins of the South Platte River, and in Segments 16a, 16d, 16e, 16f, 16g, 16h, 16i, 16j, and 16k.						
COSPUS16C Classifications		Physical and Biological			Metals (ug/L)	
Designation	Agriculture UP Aq Life Warm 2 Recreation E	DM	MWAT		acute	chronic
			WS-II	WS-II	Temperature °C	---
		acute	chronic			
		---	5.0	D.O. (mg/L)	---	100
Qualifiers:		6.5 - 9.0	---	pH	---	---
Other:		---	150*	chlorophyll a (mg/m ²)	TVS	TVS
*chlorophyll a (mg/m ²)(chronic) = applies only above the facilities listed at 38.5(4).		---	126	E. Coli (per 100 mL)	TVS	TVS
*Phosphorus(chronic) = applies only above the facilities listed at 38.5(4).		Inorganic (mg/L)			---	100
		acute	chronic			
		TVS	TVS	Ammonia	TVS	TVS
		---	0.75	Boron	TVS	TVS
		---	---	Chloride	---	1000
		0.019	0.011	Chlorine	TVS	TVS
		0.005	---	Cyanide	---	0.01(t)
		100	---	Nitrate	---	150
		---	0.5	Nitrite	TVS	TVS
		---	0.17*	Phosphorus	TVS	TVS
		---	---	Sulfate	TVS	TVS
		---	0.002	Sulfide	---	---
				Uranium	---	---
				Zinc	TVS	TVS

All metals are dissolved unless otherwise noted.
T = total recoverable
t = total
tr = trout

D.O. = dissolved oxygen
DM = daily maximum
MWAT = maximum weekly average temperature
See 38.6 for details on TVS, TVS(tr), WS, temperature standards.



Existing Wells

- Shallow Well
- Deep Well

Plume

- 1,4-Dioxane concentration greater than site's performance standard of 0.9 µg/L using most recent sample results (dashed where inferred)
- ▭ Lowry Landfill Superfund Site Boundary

Notes:

1. **MW179-UDEN** - wells sampled during North End Investigation
2. **MW129-WD** - wells sampled during the 2018 Synoptic Event



Figure 2.3
North End Groundwater Chemistry Monitoring Network
Phase I Technical Memorandum
Lowry Landfill Superfund Site, Colorado



EXHIBIT C

Aurora Code Section 138-154. - Use of independent water system; cross connection; use of Dawson Aquifer.

(a) It shall be unlawful for any person to develop or use for any purpose, except as approved in writing by the director of water, including domestic and irrigation uses, within the city limits, any independent water system as defined in this article. [see below]

(b) Notwithstanding any other provisions of this article, those persons who have existing wells, either shallow or deep, or any other valid water rights for use within the city limits, as of the effective date of the ordinance from which this section derives, and those persons who filed notice of lack of consent to the city's use of water under their land, within the period established by the water court, water division no. 1, for filing such notice, shall be allowed to use such wells or water rights. However, the use of such wells or water rights for any purpose shall not permit cross connection between such private service line and a service line carrying water from the public water system as prohibited in subsection (c) of this section.

(c) It shall be unlawful for any person to have a cross connection between a private service line carrying private well water or other private water with a service line carrying water from the public water system, or in any other manner endangering or contaminating the public water system. If, after notice and informal hearing, a violation of this section is found to exist, the water department is authorized to forthwith disconnect the cross connection or to terminate water service to the premises until such time as disconnection of the offending cross connection can be accomplished, in addition to any other penalties provided for a violation of this article.

(d) The following shall apply to the area within one-half mile of section 6, township 5 south, range 65 west of the sixth principal meridian in the city in Arapahoe County:

(1) It shall be unlawful for any person to drill, develop, or use any wells in the Dawson Aquifer within one-half mile of the exterior boundaries of section 6 until such time as the Environmental Protection Agency's groundwater remedy for the Lowry Landfill superfund site has been implemented consistent with the record of decision and the agency's five-year performance review of the remedy has occurred, as determined by the city council. This prohibition shall not apply to wells that are used for monitoring groundwater quality, extracting groundwater for remediation, or reinjecting treated groundwater.

(2) After the five-year performance review has occurred and the Environmental Protection Agency reports that the remedy is protective at the compliance boundary, the prohibition against drilling wells in the Dawson Aquifer shall expire, provided that the drilling or use of such wells within one-half mile of the boundaries of section 6 shall only occur with the approval of the city.

(3) There are adopted by this reference the state primary drinking water regulations, promulgated by the state board of health and found in volume 5 of the Colorado Code of Regulations 1007-3, as amended, which regulations shall apply to water quality at the point of use in the following categories:

a. Community drinking water systems;

b. Noncommunity drinking water systems; and

c. Systems with fewer than 15 service connections or which regularly serve an average of fewer than 25 persons fewer than 60 days of the year and providing well water for ordinary household purposes, the watering of poultry, domestic animals, and livestock on farms and ranches, and the irrigation of home gardens and lawns.

Records of water quality monitoring required by the drinking water regulations shall be kept and shall be made available to the city upon request.

(Code 1979, § 39-70; Ord. No. 2005-74, § 1, 10-10-2005; Ord. No. [2018-57](#), § 2, 10-29-2018)

Note: Independent water system is defined in Aurora's Code as follows:

Independent water system means water supplies developed for use within city limits other than water supplies owned, leased, operated, controlled or otherwise utilized by the city water delivery system. Such water supplies shall include but not be limited to the following: nontributary groundwater supplies drawn from the Arapahoe, Laramie-Fox Hills, Denver, or Dawson aquifers subject to the provisions of C.R.S. § 37-90-137(4).

ANNEXATION AGREEMENT
2020

This Agreement made and entered into this _____ day of _____, 202_, by and between _____ ("Annexor") and the City of Aurora, a home rule municipal corporation of the Counties of Adams, Arapahoe, and Douglas, State of Colorado (the "City").

RECITALS

Annexor is the owner of the property described in Exhibit "A," attached hereto (the "Property") and has filed a petition to annex said property to the City.

In consideration of the foregoing premise and the covenants, promises, and agreements of each of the parties hereto, to be kept and performed by each of them, IT IS AGREED:

1. DEFINITIONS

1.1 "Annexor" shall mean and refer to Annexor, and its heirs, successors, assigns, and designees.

1.2 "Capital Impact Fee" shall mean the City's fee established by City Council that shall be levied and assessed on a per-unit basis (residential uses) as a condition of issuance of a building permit for the purpose of defraying the projected impacts on capital facilities of the City caused by proposed development.

1.3 "City" shall mean the City of Aurora, Colorado.

1.4 "City Code" shall mean the City Code of the City of Aurora, Colorado.

1.5 "City Council" shall mean and refer to the City Council of the City.

1.6 "Crossings" shall mean and refer to all bridges, culverts, or other types of facilities or structures used to cross roadways, drainage ways, or storm drainage areas.

1.7 "Drainage Master Plan" shall mean the overall plan developed by the Director of the Water Department that addresses various matters relating to storm drainage within the City, including the identification of drainage and flooding problems, the compilation of base data related to rainfall and runoff, proposals for controlling storm water flows, and cost control measures regarding the construction, operation and maintenance of drainage facilities.

1.8 “Freeboard” shall mean the vertical distance in feet above a predicted water surface elevation intended to provide a margin of safety to compensate for unknown factors that could contribute to flood heights greater than the height calculated for a selected size flood such as debris blockage of bridge openings and the increased runoff due to urbanization of the watershed.”

1.9 “Major Drainage Facility” shall mean those drainage facilities as defined in Section 138-361 of the City Code that provide conveyance or detention of storm water from areas equal to or greater than 160 acres in area as identified in the City’s Drainage Master Plan

1.10 “Minor Drainage Facility” shall mean those drainage facilities as defined in Section 138-361 of the City Code that provide conveyance or detention of storm water from areas less than 160 acres in area.

1.11 “Park Development Fee” shall mean the City’s fee established by City Council, payable at the time building permit issuance, that the City charges to offset the costs to the City of improvements to public park lands that are required to address the impacts to such parks from development on the Property.

1.12 “Sewer Interceptor Development Fee” shall mean the City’s fee established City Council, payable at the time of subdivision platting, that the City charges for extension by the City of sewer interceptor lines and other improvements necessary to provide sanitary sewer service to development on the Property.

1.13 “Sewer Interceptor Lines” shall mean and refer to sewer lines larger than twelve inches (12”) in diameter.

1.14 “Siren Fee” shall mean the City’s established by City Council, payable at the time of subdivision platting, that the City charges for providing public safety warning sirens to serve the Property.

1.15 “Streets” shall mean and refer to local, residential, commercial, collector, minor, and principal arterial streets, highways, expressways, and roadways.

1.16 “Storm Drainage Development Fee” shall mean the City’s fee established by City Council, payable at the time of subdivision platting, that is levied and assessed upon each vacant and undeveloped lot and parcel of land within the City for the purpose of funding the construction and installation of major facilities in accordance with the Drainage Master Plan.

1.17 “Water Transmission Lines” shall mean and refer to water lines larger than twelve inches (12”) in diameter.

2. STREETS

2.1 Annexor shall dedicate free and clear of all liens and encumbrances of any kind, all rights-of-way for public streets for the full width thereof, as required by the City. Annexor shall design and fully improve to City standards all public streets within the Property, and one-half of all streets lying on or abutting the exterior boundaries of the Property, without cost to the City. Such dedication of streets shall occur at the time of City approval of each subdivision plat within the Property; however, Annexor agrees to dedicate such rights-of-way at an earlier time when determined by the City to be required for commencement of construction of such streets or for extension of utilities. An earlier dedication shall not relieve Annexor of its obligation to improve streets as provided herein.

2.2 Annexor agrees to convey to the City an easement in gross adjoining arterials, highways, and expressways to provide necessary cut and fill to establish the grade on a one-foot incline for every three-feet (3') of distance. Said easement shall be released to Annexor at such time as the adjacent property is filled and maintained at grade.

2.3 Annexor agrees to include the Property in districts or other mechanisms established by the City for improvement of roadways.

2.4 Annexor will pay or escrow the proportional share of the traffic signalization cost of perimeter and internal streets necessitated by the associated development as determined by an approved traffic impact analysis or by the City traffic engineer at such time as is required by City Code.

3. WATER AND SEWER

3.1 The Annexor will be required to install Water Transmission Lines, Water Pump Stations, Sewer Interceptor Lines, Sewer Pump Stations, Stormsewer Infrastructure and required ancillary facilities required to serve the property in accordance with the most recent respective citywide utility master plan if the infrastructure is not yet in place. Annexor agrees to dedicate all necessary unobstructed right-of-way for utility easements needed for water, sewer and stormwater infrastructure to serve the Property, or for regional infrastructure through or on the Property, per the requirements outlined in Chapter 138 of City Code. Annexor shall grant additional temporary construction easements for installation of water and sewer infrastructure where required by the City. Annexor agrees to develop and provide to the City for review and approval prior to platting of the Property a master utilities plan for the annexed area. The master utilities plan shall describe collection facilities and distribution facilities.

3.2 Subject to Section 3.3 herein, the City shall provide water and sewer service to the Property after notification of need by Annexor as required for development of the Property but not before the timing identified in the most recent respective water, wastewater or stormwater master plan. Annexor agrees to pay to City all applicable fees per the most recent published fee schedule and timing established therein. . The fee amount shall be that in effect at the time of payment. Annexor further agrees to make additional payments on the balance of the sewer interceptor fee as may be required from time to time to extend sewer interceptor lines to serve the Property as needed for development. In the event, however, that the total amount of such fees is insufficient to fund extension of the line, Annexor shall advance the necessary funds to pay for the total cost to design and construct extension of water transmission and sewer interceptor line extensions. Annexor may proceed under a separate agreement with City for payback of costs in excess of fees.

3.3 There shall be no duty or obligation upon the City to furnish water or sanitary sewer facilities to the area sought to be annexed until such time as, in the sole discretion of City, sufficient acreage has been annexed and fees paid to pay for extension of water and sewer facilities and to provide services to a sufficient number of inhabitants within the areas so as to make the construction and establishment of such services feasible. The City's obligation to provide water is subject to any water restrictions and rate modifications that the City Council enacts under its general police power including, but not limited to, drought management plans and regulations adopted by the City Council and/or the Director of the Water Department pursuant to City Code.

3.4 Notwithstanding the fees provided in this Article III, if provision of water and sewer services requires payment of fees or charges to regional or metropolitan service agencies or other third party authorities, Annexor shall provide such funds as and when required by such service agency.

3.5 Annexor will pay connection fees as are required by the City at the time identified in the most recently published fee schedule. Annexor agrees that all promises of water and sanitary sewer service made by this agreement are subject to any water and sewer tap allocation program of the City, and are uniformly applied subject to any other general restrictions of the City, or regional service agencies, relating to the provision of water and sanitary sewer service.

3.6 Accompanying the Petition for Annexation, Annexor shall deliver to City copies of special warranty deed(s) for the non-tributary and not non-tributary water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers that lie beneath Annexor's Property, along with an affidavit(s) by Annexor that the original fully executed deeds conveying ownership, right and title to the ground water will be delivered to the City prior to scheduling of the final reading and approval of the annexation by City Council. In addition to standard warranties of a deed of this type, the special warranty deed shall specifically warrant that the grantor has not divested

of any ownership, right or title to the subject non-tributary and not non-tributary ground water prior to its conveyance to the City. The special warranty deed shall be substantially in the form of the sample deed attached hereto, and shall be held in escrow until the annexation is approved by City Council.

3.7 Annexor grants in perpetuity to the City the sole and exclusive right to claim, own, withdraw, appropriate, and use any and all water within the Dawson-Arkose, Denver, Arapahoe, and Laramie-Fox Hills aquifers underlying the Property. Annexor irrevocably consents in perpetuity, pursuant to Section 37-90-137(4) of the Colorado Revised Statutes, as now existing or later amended, to the withdrawal, appropriation, and use by the City of all such water, and agrees to execute any additional or supplemental consents thereto that may be required for the City to withdraw, appropriate, or use said water.

3.8 Annexor agrees that if it does not have the sole and exclusive right to any or all of the non-tributary and not non-tributary water that lies beneath the Property and for this reason or for other reasons, cannot comply with the requirements set forth in paragraphs 3.6 and 3.7, above, Annexor is to satisfy the following requirements:

3.8.1 Accompanying the Petition for Annexation, Annexor is to deliver to the City an affidavit by the Annexor stating the Annexor's current knowledge of the ownership of the nontributary and not nontributary ground water underlying the Property that cannot be conveyed to the City.

3.8.2. Prior to the scheduling of the City Council meeting for final reading and approval of the annexation ordinance, Annexor shall deliver the following to the City:

3.8.2.1. A report containing the following information to be prepared by a person skilled in the knowledge of water rights: 1) the amount of ground water underlying the Property available for appropriation using parameters and information developed by the State Engineer, as well as more site specific information, if available; 2) the amount of ground water underlying the Property that was appropriated prior to July 6, 1973; 3) a description of any decreed rights to ground water underlying the Property and 4) any other information relevant to the use and ownership of the ground water underlying the Property

3.8.2.2. The monetary value of the ground water underlying the Property that is unavailable to Annexor for conveyance to the City by Special Warranty Deed. This excludes ground water appropriated by entities other than Annexor and within the purview of C.R.S. §§ 37-90-137(5) and 37-90-107(7)(b). The value shall be determined based on the amount of ground water underlying the Property as determined in the report prepared pursuant to subparagraph 3.8.2.1., above, and the ground water values as determined

by the Water Department. The ground water values are set forth in the current City of Aurora fee schedule.

3.8.2.3. For annexations of ten acres or less in total area, the Annexor has the option to satisfy the requirements of subparagraph 3.8.2.1 and 3.8.2.2., above, or pay to the City a sum equal to the values set forth in the current City of Aurora fee schedule.

3.9. The Director of the Water Department shall make a determination if Annexor has satisfied the requirements set forth in paragraphs 3.5 through 3.8., above, and in his/her sole discretion may modify the requirements if justified by special circumstances.

3.10. The drilling of water wells upon the Property shall not be commenced or undertaken without the prior approval of the City Council. To the extent that the City wishes to drill wells on the Property, the location of such wells shall not affect materially the development plan. Annexor agrees to convey necessary easements to City for wells.

4. STORM DRAINAGE

4.1 Annexor shall pay the fees required by the most recently published fee schedule and at the timing identified therein.. The amount payable shall be pro rata based upon the total acreage of each plat.

4.2 In the event Annexor desires to complete the development of any portion of the annexed lands prior to completion of the Major Drainage Facilities by the City, Annexor may make those improvements at its own expense. At its option, and subject to a separate agreement, the City may agree to reimburse Annexor at a future date for Annexor's cost, or a portion thereof, for construction of said improvements.

4.3 Annexor shall be responsible for the design and construction of Minor Drainage Facilities as identified in the corresponding Major Basin Master Drainage Study, Outfall Systems Plan, or Local Master Drainage Study.

4.4 It shall be the responsibility of Annexor, at its sole expense, to provide adequate drainage, control, and conveyance of storm water as described in Section 138-366 of the City Code. Annexor shall dedicate all land within the 100-year floodplain plus the additional area needed to provide conveyance of runoff for two feet of freeboard above the base flood elevation and/or the channel stability width as identified by Urban Drainage and Flood Control District, whichever is greater including a maintenance trail corridor at the time of platting of any property located adjacent to the floodplain.

5. CROSSINGS

5.1 The parties mutually agree that whenever it is found and determined by the City that a crossing of drainage way, existing or proposed roadway, railroad, or any impediment to a roadway is required within the Property, the City shall specify design criteria, and Annexor shall construct the crossing, including transition improvements, in conjunction with the development of the Property. The crossings required for the described Property shall be constructed in conformance with City standards.

5.2 If a crossing is required on the exterior boundary of the Property, Annexor shall be responsible for its proportionate share of the construction cost as determined by the City.

6. PUBLIC LAND DEDICATION

6.1 Annexor agrees to dedicate land to the City to be used for public purposes, or pay cash-in-lieu of land if required by the City. The dedication of public land intended for parks and open space purposes shall comply with the requirements of the City Code as may be subsequently amended by the City Council. Land dedicated for public uses other than parks and open spaces shall equal one percent (1%) of residentially-zoned property and two percent (2%) of the property zoned non-residential. Dedication of public land for parks and open space purposes shall occur, by subdivision plat or separate document at the discretion of the City, at time of first subdivision plat within the Property or in accordance with timing/phasing requirements specified in a planning document for the Property approved by the City. All dedicated lands shall be platted by Annexor at the time of dedication in accordance with the City's subdivision regulations. The external boundaries of the dedicated land shall be monumented on the ground as required by the City Code.

6.2 In the event Annexor dedicates land within the Property pursuant to Section 6.1, Annexor shall meet all the standards for acceptance by the City as enumerated herein. All such dedicated or conveyed real property shall be dedicated for the perpetual use and benefit of the public by the dedication language of the relevant subdivision plat or shall be conveyed to the City by general warranty deed free and clear of mortgages, deeds of trust, and other liens of whatever sort, and be free and clear of other restrictions, reservations, exceptions, covenants, easements, rights-of-way, severed mineral interests and other encumbrances (except easements of record), and other encumbrances or natural conditions, except for those to which the City had no reasonable objection in light of the intended use of the site, at no monetary cost to the City. Said land shall have zoning to permit the intended use.

6.3 In the event the City requires cash-in-lieu of land dedication pursuant to Section 6.1, Annexor shall pay money to the City in an amount equal to the fair market value of the land required for parks and open spaces. Said fair market value shall be based on the amount of land as if vacant, zoned for the intended use(s) and with public

improvements, including but not limited to water, sanitary sewer, storm drainage, streets, curb, gutter and sidewalk, available to the perimeter of the property being valued.

6.4 Promptly upon applying for any subdivision plat within the Property, the approval of which will trigger any cash-in-lieu of land dedication payment, Annexor shall notify the City and commence negotiations to agree upon the amount of said payment. If available, Annexor shall submit to the City a copy of an appraisal from a certified general appraiser on the subject land current within six months of the date of submittal. If the parties cannot agree upon the amount of any cash-in-lieu payment required by this agreement, each party shall appoint an appraiser of its choosing, whose fees shall be paid by the appointing party. If the two appraisers thus appointed cannot agree on the amount, they shall jointly appoint a third appraiser whose fees shall be paid half by Annexor and half by the City. The amount shall be the average of the two appraisal amounts (out of three appraisals) that are closest to one another in value. Until the amount is established as provided in this Section 6.4, the City shall not approve the plat that triggers the cash-in-lieu payment at issue to proceed to final approval. The City agrees to respond with reasonable promptness in all matters regarding determination under this Section 6.4 so as to minimize the platting delay, if any, to Annexor.

6.5 Annexor agrees that if between the time of annexation and subdividing, any of the described Property is rezoned from a nonresidential to a residential classification, or a residential zoned area is rezoned to a higher density, the City may require additional land dedications or cash-in-lieu of land dedication at the time of subdivision platting.

6.6 To the extent the described Property is to be zoned residential, Annexor shall dedicate land for public schools as required by City Code Section 147-48. All land dedication or cash-in-lieu of land dedication for schools shall be due at the time of the platting of the first residential subdivision. Land dedicated for schools shall comply with the requirements of City Code.

6.7 Annexor agrees that lands to be dedicated for parks and open spaces and public purposes shall include all site and public improvements including, but not limited to water, sanitary sewer, storm drainage, streets, curb, gutter and sidewalk. Annexor shall install such improvements when determined by the City to be necessary. (Alternatively, if determined by the City at the time of conveyance that the improvements are not needed at that time, then Annexor shall enter into a separate agreement specifying when and how the improvements will be made). No lands to be dedicated for public purposes shall be disturbed by Annexor in any manner to disrupt the natural landscape, unless first approved by the City. Annexor agrees that all lands donated to the City shall not be used as a borrow pit or fill area. Any sites dedicated for public purposes, but disturbed due to grading of adjacent sites, or lands within the flood plain disturbed due to storm drainage improvements, must be

successfully planted or seeded by Annexor with native grasses acceptable to City to prevent erosion.

6.8 Annexor agrees to pay to City the Park Development Fee.

7. URBAN SERVICES

7.1 Annexor agrees, pursuant to City Code Section 146-301, that the annexation of the Property to the City shall not create any additional cost or impose additional burden on the existing residents of the City to provide such public facilities and services to the Property after annexation. Annexor agrees that it shall be responsible for mitigating such impacts through compliance with standards and payment of fees that are adopted by the City Council, and that are generally applied and uniform in application to similarly situated properties. The standards and fees will be used to provide adequate public facilities and services to the development. Annexor shall pay the Capital Impact Fee for residential development as established by ordinance for the dwellings to be constructed within the Property.

7.2 Annexor shall petition for exclusion from any fire protection district that is reflected within the County Assessor's "Certificate of Taxes Due" upon completion of the annexation and approval of zoning. Annexor will use reasonable efforts to complete the exclusion and obtain the exclusion order before the first subdivision plat for the Property is approved by the City. At no cost to the City, the City agrees to cooperate and assist with Annexor's efforts to complete exclusion from the fire protection district. City shall provide fire protection upon exclusion of the property from the district. It is expressly understood that the City may be unable to provide fire protection to any of the annexed land prior to the installation of required fire hydrants by Annexor.

7.3 If the area of the herein described annexation lies wholly or partially within a legally constituted water, sanitation, or water and sanitation district, there shall be no obligation on the part of the City to provide such utilities services to the areas within any such district, unless it is done by mutual agreement between the City and such district. However, if requested by the City, Annexor shall petition for exclusion from the district. In the event of exclusion, the City shall assume responsibility for service to the annexed area, and Annexor shall comply with all applicable utilities service provisions contained herein.

7.4 Annexor shall pay the Siren Fee established by City Council, at the time of subdivision plat approval to be used by the City to fund emergency warning sirens in the area. If requested by City, Annexor shall provide a minimum of ten (10) foot by ten (10) foot easement to locate the siren and tower.

8. GENERAL PROVISIONS

8.1 This agreement shall be recorded with the Clerk and Recorder in _____ County, Colorado, shall run with the land, and shall be binding upon and inure to the benefit of the heirs, successors, and assigns of the parties hereto. Annexor shall have the right to assign or transfer all or any portion of its interest, right, obligations under this Agreement to third parties acquiring an interest or estate in the Property, or of any improvements now or hereafter located on the Property, provided that to the extent Annexor assigns any of its obligations under this Agreement, the assignee of such obligations shall expressly assume such obligations. The express assumption of any of Annexor's obligations under this Agreement by its assignee or transferee shall, upon written notice to the City, thereby relieve Annexor of any further obligations under this agreement with respect to the matter so assumed. Annexor shall notify the City of assignments and the names of assignees. Every part of the Property shall at all times remain subject to all the obligations of this agreement with respect to each and every part of the Property.

8.2 In order to facilitate construction of improvements and subject to the City's rights of review and approval under the laws of the State of Colorado and the City Code, City will consider the creation of one or more districts including, but not limited to special and general improvement districts authorized pursuant to Title 31, C.R.S., and special districts authorized pursuant to Title 32, C.R.S., to provide for the financing of public improvements. Annexor agrees that any special district established within the Property shall not levy, charge, or collect a sales tax, nor shall such district apply for or request Colorado Conservation Trust Funds as supplemented by the state lottery.

8.3 By entering into this Agreement, the City does not repeal any existing codes or ordinances, nor does the City intend to waive, limit, or impair its legislative, governmental, or police powers to adopt ordinances and regulations that apply to the property. No term or provision of this Agreement shall prohibit the enactment by the City Council or future City Councils of any fee, assessment, or ordinance applicable to the Property that is of general application to properties similarly situated.

8.4 No right or remedy of disconnection of the described Property from the City shall accrue from this agreement, other than that provided by City Code Section 146-307. In the event the Property or any portion thereof is disconnected at Annexor's request, City shall have no obligation to serve the disconnected Property and this agreement shall be void and of no further force and effect as to such Property.

8.5 If the annexation of the Property or any portion thereof is challenged by a referendum, all provisions of this agreement, together with the duties and obligations of each party, shall be suspended pending the outcome of the referendum election. If the referendum challenge to the annexation results in disconnection of the Property from the City, then this annexation agreement and all provisions contained herein shall be null and void and of no further effect. If the referendum challenge fails, then Annexor and City shall continue to be bound by all the terms and provisions of this annexation agreement.

8.6 In the event that the annexation of the Property or any portion thereof is voided by final action of any court, City and Annexor shall cooperate to cure the legal defect that resulted in disconnection of the Property, and upon such cure this annexation agreement shall be deemed to be an agreement to annex the Property to the City pursuant to Section 31-12-121 of the Colorado Revised Statutes. Annexor shall re-apply for annexation as when the Property becomes eligible for annexation as determined by City.

8.7 It is understood and agreed by the parties hereto that if any part, term, or provision of this agreement is by the courts held to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the agreement did not contain the particular part, term, or provision held to be invalid.

8.8 All fees recited in this agreement shall be subject to amendment by the City Council. Any amendment to fees shall be incorporated into this agreement as if originally set forth herein. Nothing in this agreement shall prevent, prohibit, diminish, or impair the City's home rule governmental authority to adopt fees or regulations to address the impacts of development.

8.9 Annexor agrees to include the Property in special and general improvement districts as may be organized by the City at any time pursuant to the provisions of Title 31, Article 25, Parts 5 and 6, of the Colorado Revised Statutes.

8.10 This instrument embodies the whole agreement of the parties. There are no promises, terms, conditions, or obligations other than those contained herein; and this agreement shall supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto. Except as provided in Section 8.8, there shall be no modification of this agreement except in writing, executed with the same formalities as this instrument. Subject to the conditions precedent herein, this agreement may be enforced in any court of competent jurisdiction.

8.11 This agreement shall terminate and expire upon the completion of the development of the Property and satisfaction of all the obligations herein. Thereafter, so long as the Property is located within the municipal boundaries of the City, it shall continue to be subject to the charter, ordinances, and rules and regulations of the City.

8.12 It is expressly understood and agreed that enforcement of the terms and conditions this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties hereto, their heirs, successors, and assigns, and nothing contained in this Agreement shall give or allow any claim or right of action by any other or third person under this Agreement. It is the express intention of the Parties that any person other than the Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

8.13 Any and all obligations of the City for water, sewer, and drainage improvements shall be the sole obligation of the City's Utility Enterprise and as such, shall not constitute a multiple fiscal year direct or indirect debt or other financial obligation of the City within the meaning of any constitutional, statutory, or charter limitation. Any and all obligations of the City for public improvements other than water, sewer, and storm drainage improvements shall be subject to annual appropriation by the City Council.

8.14 In the event of breach or default by the City, the sole remedies hereunder shall be the equitable remedies of specific performance or injunction. Annexor hereby waives any rights to money damages for any such breach or default.

IN WITNESS WHEREOF, Annexor and the City have executed this Agreement as of the day and year first above written.

_____, ANNEXOR

By: _____

Title: _____

STATE OF _____)

) ss

COUNTY OF _____)

Subscribed and affirmed to before me this _____ day of _____, 202_, by _____.

Notary Public

My commission expires: _____

CITY OF AURORA, COLORADO

By _____
BOB LEGARE, Mayor

ATTEST:

STEPHEN J. RUGER, City Clerk

APPROVED AS TO FORM:

BRIAN RULLA, Assistant City Attorney

SPECIAL WARRANTY DEED

This Deed is made this _____ day of _____, 20____, between _____, whose address is _____, _____ County, Colorado _____ (“Grantor”) and the City of Aurora, Colorado, a Colorado municipal corporation of the State of Colorado, acting by and through its Utility Enterprise, whose address is 15151 East Alameda Parkway, Suite 3600, Aurora, Arapahoe County, Colorado 80012 (“Aurora”).

WITNESSETH

That Grantor for and in consideration of the sum of One Dollar (\$1.00) and other good and valuable consideration, in hand paid by Aurora, the receipt, adequacy, and sufficiency of which is hereby acknowledged, hereby sells and conveys to Aurora the following real property, being water rights and rights to water that are located in the County of _____, State of Colorado, to wit:

All ground water from non-tributary and not non-tributary sources in the Dawson (A.K.A. Dawson-Arkose), Denver, Arapahoe and Laramie-Fox Hills Aquifers, including but not limited to water and water rights in any upper and lower aquifers, if any such aquifers are so subdivided, lying under approximately _____ acres of land owned by the Grantor, being more particularly described in Exhibit _____ attached hereto and made a part hereof. This grant includes any water and water rights decreed in Water Division 1, Case No. _____ or water permitted under Well Permit No. _____ or Ground Water Commission Permit No. _____. [References to Water Court Case No.s, Well Permit No.s. or Ground Water Commission Permit No.s should be included if applicable].

Together with all appurtenances and the Grantor warrants the title to the same against all persons claiming under it, forever, provided; however, Grantor does not warrant the quantity or quality of water available through the exercise of the above conveyed water rights and rights to water. Grantor further specifically warrants that it has not divested itself of the subject non-tributary and not non-tributary water rights and right to water prior to its conveyance to the City.

In witness hereof, the Grantor has executed this Deed on the date set forth herein above.

GRANTOR:

STATE OF _____)
)ss
COUNTY OF _____)

The foregoing Special Warranty Deed was acknowledged before me by _____, Grantor.

Witness my hand and seal affixed on this day of _____, _____.

My commission expires _____

Notary Public

[SEAL]