

**AURORA REGIONAL IMPROVEMENT AUTHORITY NO. 1
ESTABLISHMENT AGREEMENT**

THIS AGREEMENT ("Agreement"), entered into as of the 28th day of August, 2006, by and between the City of Aurora, Colorado, a political subdivision and municipal corporation of the Counties of Adams, Arapahoe, and Douglas and of the State of Colorado ("Aurora"), and each of the metropolitan districts that are signatories hereto, all of which are quasi-municipal corporations and political subdivisions of the State of Colorado (each a "District" or collectively the "Districts"). All signatories hereto are referred to herein as the "Parties" and individually as "Party."

RECITALS

WHEREAS, Aurora is a municipal corporation and political subdivision of the State of Colorado created pursuant to Article XX of the Constitution of the State of Colorado, charged under the Constitution of the State of Colorado with the performance of municipal functions, duties and obligations; and

WHEREAS, the Districts were formed pursuant to Colorado Revised Statutes § 32-1-101, *et seq.*, as amended, by order of the district court and after approval of the eligible electors of the Districts at a special election, for the purpose of assisting in the financing and construction of public improvements within certain areas located within Aurora; and

WHEREAS, certain community improvement projects are contemplated that will provide various functions, services, and facilities within or for the benefit of Aurora and the Districts (the "Regional Improvements"); and

WHEREAS, the Parties have a compelling mutual interest in developing and coordinating plans, present and future, for the Regional Improvements and developing strategies to promote the public welfare; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(a), provides that the Constitution shall not be interpreted to prohibit the state or any of its political subdivisions from making the most efficient and effective use of their powers by cooperating and contracting with each other; and

WHEREAS, the Constitution of Colorado, Article XIV, Section 18(2)(b), provides that the Constitution shall not be interpreted to prohibit the enactment of a statute authorizing political subdivisions to establish a separate governmental entity to provide any function, service, or facility lawfully authorized to each of the contracting political subdivisions; and

WHEREAS, the general assembly has enacted Colorado Revised Statute § 29-1-203(4) to implement the provisions of Colorado Constitution Article XIV, Sections 18(2)(a) and (b), by authorizing political subdivisions to establish, by contract, a separate legal entity to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, the Districts each operate under a service plan approved by Aurora on or after August 2004 ("Aurora Model Service Plan") which allows the Districts to enter into an intergovernmental agreement with Aurora, or enter into an ARI Authority Establishment Agreement (and to invite Aurora to participate in such agreement), within two (2) years of the approval of its service plan all as set forth in provisions of the Aurora Model Service Plan which sets forth requirements related to such intergovernmental agreement or ARI Authority Establishment Agreement ("ARI Agreement Requirement"); and

WHEREAS, the Parties desire to enter into this Agreement to establish a separate, legal entity to be known as the Aurora Regional Improvement Authority No. 2 (the "Authority") to exercise certain functions, services, or facilities as permitted by the Constitution and laws of Colorado and in accordance with the provisions of this Agreement; and

WHEREAS, the Parties intend by entering into this Agreement that the Authority hereby created be a "public entity" as defined in the Colorado Governmental Immunity Act, Colorado Revised Statutes §§ 24-10-101, *et seq.*, as amended; and

WHEREAS, the Parties intend by entering into this Agreement that the Authority, and certain projects undertaken by the Authority, be an "Enterprise" as defined in the Constitution of Colorado, Article X, Section 20; and

WHEREAS, it is deemed in the best interests of the Parties and for the public health, safety, convenience, and welfare of the residents of the Aurora and the Districts that the Parties enter into this Agreement for the purpose of forming the Authority to provide the services necessary to acquire, construct, finance, maintain, manage, promote and implement Regional Improvements that may be identified and agreed upon by the Parties from time to time;

NOW, THEREFORE, in consideration of the mutual covenants, obligations, and conditions expressed herein, it is agreed by and between the Parties hereto, as follows:

Article One General Provisions

1.1. Formation of Entity. Upon the effective date of this Agreement, there is hereby established by this Agreement a separate legal entity to be known as the Aurora Regional Improvement Authority. The Parties agree the Authority is an independent legal entity, separate and distinct from the Parties. The Authority shall have the powers as set forth herein and is authorized to engage in the functions and services as further provided herein.

1.2. Governing Body. The Authority shall be governed by a board of directors ("Board") which Board shall have the power to provide the functions and services for which the Authority is formed, as set forth more fully in Article Two herein.

1.3. Purpose. The Authority is organized for the purpose of planning, designing, constructing, installing, acquiring, relocating, redeveloping or financing the Regional Improvements designated in ARI Master Plans, as defined in the Aurora Model Service Plan.

1.4. Immunity. The Authority shall be a "public entity" as defined by the Colorado Governmental Immunity Act, Colorado Revised Statutes, § 24-10-101, *et seq.*, as amended.

1.5. Enterprise. The Authority shall be an "Enterprise" as defined by the Constitution of Colorado, Article X, Section 20.

1.6. Duration of the Agreement. The Authority shall operate for a term beginning August 29, 2006, and terminate as provided in Article Seven.

1.7. Effective Date. This Agreement shall be effective upon the date when at least three Districts execute this Agreement, provided that each such District satisfies the ARI Agreement Requirement, and it shall be deemed effective whether or not all of the Districts and/or Aurora have executed this Agreement. The terms of this Agreement shall become effective as to each District that is a signatory hereto upon execution by such District or upon execution by the Operating District, (as defined in the Aurora Model Service Plan), on such District's behalf. Upon execution by an Operating District, each District existing under such Operating District's Aurora Model Service Plan shall be deemed to be a Party hereto and shall be fully bound hereby.

1.8. Indemnification. To the extent permitted by law, the Authority shall indemnify, defend, and save harmless the Parties, their officers, agents, and employees from and against any and all claims and losses whatsoever occurring or resulting to persons, firms, or corporations furnishing or supplying work, services, materials, or supplies to the Authority in connection with the performance of the Agreement, and, except as expressly provided by law, from any and all claims and losses accruing or resulting to any persons, firm, or corporation, for damage, injury or death arising out of or connected with the Authority's performance of its obligations under this Agreement.

Article Two

Organizational Structure

2.1. Board of Directors. The Authority's governing body shall be a Board of Directors ("Board") which shall exercise and perform all the powers, rights and duties vested in and imposed on the Authority by this Agreement. Each Board member shall serve at the will and pleasure of the District which appointed the Board member. Such service shall be without compensation by the Authority. Board members may be reimbursed for their actual expenses incurred in serving the Authority but only as approved by unanimous vote of the Authority Board. Districts entitled to appoint a Board member, and Aurora if it executes this Agreement, may be referred to herein as "Members."

2.2. Composition of Board. Where two or more Districts are a party to an intergovernmental agreement ("District IGA") that delegates decision making authority regarding the construction and financing of public improvements to a single district ("Operating District"), only the Operating District shall be entitled to appoint a Member to the Board. Districts which are not a party to a District IGA shall be entitled to appoint one (1) representative each provided they have executed this Agreement on their own behalf. If an Operating District is dissolved or consolidated with any other District, the remaining Districts that were a party to

the District IGA shall collectively appoint one (1) representative. Aurora shall be entitled to appoint one Board member regardless of its voting power described below.

2.3. Addition of New Members. The Authority may add new Members from time to time as it determines necessary and prudent. To be eligible as a Member of the Authority, the new party must first be bound by an Aurora Model Service Plan subject to the ARI Agreement Requirement and also agree to become bound by the terms of this Agreement. New Members shall be allowed to appoint representatives to the Board of Directors in accordance with Article 2.2.

2.4. Voting and Quorum. Each Board member appointed by a Member shall have one (1) vote. Notwithstanding the foregoing, if Aurora executes this Agreement its representative shall be entitled to thirty percent (30%) of the Authority's total voting power. Such voting power, expressed in a number of "votes," shall be adjusted from time to time to account for the addition of new Members so as to preserve Aurora's 30% voting power. A quorum of the Board shall consist of Board Members representing two-thirds of the votes counting Aurora as one (1) vote for quorum purposes. No official action may be taken by the Board on any matter unless a quorum is physically present. A quorum may be established by telephonic attendance of a Member provided that a quorum must continue to exist at the time any vote is taken. No powers of the Authority may be exercised, and no cost may be incurred, or other debt, liability or obligation for or on behalf of the Authority may be created without the unanimous vote of all Authority Members.

2.5. Bylaws and Regulations. The Authority shall have the power to elect or appoint such officers and to adopt such bylaws and internal regulations as are necessary for the conduct of the Authority so long as such bylaws and regulations are not in conflict with the provisions of this Agreement.

2.6. Withdrawal. A Member may withdraw from the Authority and be released from this Agreement at any time, and cease being a Member of the Authority, in order to form a separate authority or enter into a separate intergovernmental agreement for purposes of compliance with the ARI Agreement Requirement. A Member's withdrawal shall not be effective until the Member has provided the other Members with sixty (60) days written notice.

Article Three

Project Committees

3.1. Project Committees. Members from three (3) or more Approved Development Plan areas, as defined by the Aurora Model Service Plan, may, by separate written agreement, form a "Project Committee." No Member shall be obligated to participate in any Project Committee, nor shall any Member be deemed to be part of any project undertaken by the Authority, without its written consent. Absent such consent, no ARI Mill Levy Revenue attributable to such Member may be used for any purpose. Each Member of a Project Committee may propose an ARI Master Plan for consideration by the Project Committee. Project Committees that have an ARI Master Plan shall have the authority to use revenues from the ARI Mill Levy, as defined in the Aurora Model Service Plan, attributable to their Districts, for the construction of the Regional Improvements in an approved ARI Master Plan. Each

Project Committee shall be entitled to adopt its own rules of procedure, operation and participation, all to be set forth in writing acceptable to the Project Committee members.

Article Four Powers of the Authority

4.1. Plenary Powers. Except as otherwise limited by this Agreement, the Authority, in its own name and as provided herein, shall exercise all powers lawfully authorized herein by the Parties pursuant to Colorado Revised Statutes, § 29-1-203, as amended, including all incidental, implied, expressed or such other powers as necessary to execute the purposes of this Agreement. The Authority shall act through its Board, its officers and employees as authorized by the Board pursuant to the Bylaws and Regulations. The Authority shall not have the power to represent itself as or act as agent for or on behalf of the other Parties without their written consent.

4.2. Enumerated Powers. The Authority's powers shall be exercised only by unanimous consent of the Board, or in the case of a Project Committee, by unanimous consent of such Project Committee. Such powers shall include the following:

- A. To hold, acquire, operate, manage, lease (as lessee or lessor), sell, construct, reconstruct or repair, or dispose of real and personal property in the name of the Authority;
- B. To make and enter into contracts, including, without limitation, contracts with local governmental entities, including the Parties, and other special districts, authorities, nonprofit corporations, and state or federal agencies;
- C. To make and enter into contracts, subject to payment provided by federal, state or other governmental funding, from revenues generated by the Authority and from funding, including loans, provided by the Parties or either of them, as deemed appropriate, for goods and services;
- D. To sue and be sued in the Authority's own name;
- E. To hire and fire agents, employees, consultants and professionals pursuant to the Bylaws and Regulations of the Authority;
- F. To provide for the furnishing of Regional Improvement services, privileges, works or facilities as authorized in the Districts' service plans; to dedicate property acquired or held by it for public works, improvements, facilities, utilities, and purposes; and to agree, in connection with any of its contracts, to any conditions that it deems reasonable and appropriate including, but not limited to, conditions attached to federal financial assistance, and to include in any contract made or let in connection with any project of the Authority provisions to fulfill such of said conditions as it may deem reasonable and appropriate;
- G. To fix, maintain, and revise fees, rates, rents, security deposits, and charges for functions, services, or facilities provided by the Authority;

- H. To acquire, construct, manage, maintain, operate, lease, or otherwise dispose of real property, buildings, works, improvements, or other facilities necessary to carry out the purposes of this Agreement;
- I. To prepare and implement a pay, retirement and benefits compensation plan for all employees of the Authority;
- J. To prepare and approve an annual budget and any necessary amended or supplemental budgets, as set forth in Article Five;
- K. To adopt, modify, and amend Bylaws and Regulations pursuant to Article 2.6, above;
- L. To enter into agreements for the purpose of securing any necessary professional, administrative, or support services;
- M. To keep and maintain financial books and records to account for all expenditures of funds, and to obtain an independent audit conducted by Certified Public Accountants selected by the Board, of such records annually with the results of same submitted to the Parties;
- N. To accept contributions, grants, or loans from any public or private agency, individual, or the United States or any department, instrumentality, or agency thereof, for the purpose of financing its activities;
- O. To adopt financial and investment policies and invest monies remaining in any fund which are available for investment in accordance with the laws of the State of Colorado including Articles 10.5 and 47 of Title 11, Colorado Revised Statutes, as amended, for the investment of public funds or by public entities;
- P. To contract for goods or services;
- Q. To issue revenue bonds or other obligations as provided herein to finance Improvement Projects in accordance with Article 5.5, herein;
- R. To enter into lease-purchase agreements and issue certificates of participation in accordance with Colorado Revised Statutes § 29-1-101, *et seq.*, as amended;
- S. To take all actions necessary or appropriate to carry out and implement the provisions of this Agreement;
- T. To condemn property for public purposes through the power of eminent domain;
- U. To control and accept public rights of way.

4.3. Implied Powers. In determining what implied powers the Authority has under Article Three, herein, it shall be clearly understood the Authority shall not have the following powers:

- A. Taxation.
- B. Special assessments pursuant to Article 25 of Title 31, Colorado Revised Statutes, and Article 1 of Title 32, Colorado Revised Statutes, as amended.
- C. Creation of general obligation debt.
- D. Zoning or other governmental powers over land use.
- E. Building, fire code, public health and safety regulations.
- F. Imposition or assessment against the Parties to this Agreement of any fees, rates, or charges, except that the Districts shall advance funds for operations of the Authority in the event the Authority does not have sufficient revenue.
- G. Assignment or delegation of any specific powers, duties or responsibilities imposed by this Agreement, except as authorized by the Parties in writing.

4.4. Spending Authority. The Authority is limited in its spending powers to the annual total budget approved by the Board, as amended. Annual expenditures shall not exceed revenues for the year plus beginning unreserved cash balances.

4.5. No Private Inurement. No part of the assets or net earnings of the Authority shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the Authority shall be authorized and empowered to pay reasonable compensation for services actually rendered and to make reimbursement in reasonable amounts for expenses actually incurred in exercising the powers or carrying out the purposes of the Authority.

Article Five Budgets/Funding/Debt

5.1. Annual Budget. No later than November 1 of each year, the Board shall have authority to cause a proposed annual budget for the next fiscal year to be prepared and shall submit a copy of the proposed annual budget to Aurora and the Districts. The budget adopted by the Board shall conform with the requirements of the Local Government Budget Law of Colorado, Colorado Revised Statutes § 29-1-101 *et seq.*, as amended, and the additional requirements set forth in this Agreement. The Board may amend the budget in accordance with statute.

5.2. Funding. The Authority shall be authorized to provide for the planning, design, acquisition, construction, installation, relocation, and/or redevelopment of Regional Improvements from the ARI Mill Levy revenues, and/or the proceeds of revenue bonds to be issued by the Authority, or may delegate and assign those rights and responsibilities to individual

Members or Project Committees. Any revenue bonds issued with a pledge, or which results in a pledge, by any District that exceeds the Maximum Debt Mill Levy and the Maximum Debt Mill Levy Imposition Term, both as defined by the Aurora Model Service Plan, shall be deemed a material modification of such Districts' service plans pursuant to Colorado Revised Statutes §32-1-207 and shall not be an authorized issuance of debt unless and until such material modification has been approved by Aurora as part of a service plan amendment.

5.3 Operations Costs. Each of the Districts that is a Party to this Agreement agrees that the Authority may fund its operations with the ARI Mill Levy revenues transferred to the Authority. The amount of money necessary to fund the operations of the Authority shall be determined each year in conjunction with the budget process and the operational costs shall be allocated on a pro-rata basis between all of the Districts. Any distribution of funds to Districts or Project Committees with approved ARI Master Plans or pledges of ARI Mill Levy to bonds, shall be net of funds necessary to operate the Authority. In the event there is a shortfall in funds necessary to operate the Authority, each District agrees to advance funds to the Authority on a pro-rata basis. The Authority shall reimburse any operational advances from ARI Mill Levy revenue received from each respective district.

5.3. Books and Records. The Authority shall provide for the keeping of accurate and correct books of account on an accrual basis in accordance with the Local Government Uniform Accounting Law, Colorado Revised Statutes § 29-1-501, *et seq.*, as amended. The Board shall provide for the auditing of all books and accounts and other financial records of the Authority on an annual basis in accordance with the Colorado Local Government Audit Law, Colorado Revised Statutes § 29-1-601, *et seq.*, as amended. The audit shall be completed within six (6) months after the close of the fiscal year and shall be presented to the Parties no later than thirty (30) days after receipt of the audit report by the Board. The Authority shall hold ARI Mill Levy revenue it receives in segregated accounts under the name of the District contributing the funds. All funds received by the Authority shall be invested in accordance with state statutory requirements.

5.4. Remittance of Funds to Authority. Until such time as there is a unanimous vote of the Members, or a unanimous vote of a Project Committee, requiring the ARI Mill Levy revenue to be transferred to the Authority, the ARI Mill Levy revenue shall be held by the Districts. Each District receiving ARI Mill Levy revenue shall hold such funds in a segregated account so that the funds may be tracked separately. At such time as the ARI Mill Levy revenue is required to be transferred to the Authority, it shall be transferred to the Authority within thirty (30) days of receipt by each District. In the case of Districts that are a party to a District IGA, the respective Districts shall transfer the ARI Mill Levy to the Operating District, which shall, in turn, transfer the funds to the Authority within thirty (30) days of receipt.

5.5. Revenue Bonds. The Authority may, from time to time, issue revenue bonds or other financial obligations for any of its purposes. The bonds shall be issued pursuant to a written resolution approved by the Board and shall be payable solely out of all or a specified portion of the revenues of the Authority as designated by the Board.

Article Six
Assets of the Authority

6.1. Asset Inventory Schedule. The Authority shall maintain an asset inventory list for any and all real or personal property acquired by the Authority by lease, purchase, donation or governmental conveyance. This list shall designate how the asset was acquired, the date of acquisition, and the date of any sale or other disposition of any asset transferred by the Authority, together with the amount of consideration received or paid by the Authority.

Article Seven
Termination

7.1. Termination By Notice. This Agreement will terminate, subject to the Districts' conformance with the provisions of their respective Aurora Model Service Plans, after provision has been made for the discharge of any debt issued by the Authority, by a two-thirds vote of the Board.

7.2. Wind-Up and Liquidation. In the event of termination of this Agreement, the Board shall wind-up and liquidate the assets of the Authority. In addition, any debts of the Authority shall not constitute debt or financial obligation or become the responsibility of the Parties.

Article Eight
Miscellaneous Provisions

8.1. Notices. Any notice required hereunder shall be given in writing, delivered personally, or sent by registered mail, postage prepaid, and addressed to the Parties at the addresses set forth below or at such other address as either Party may hereafter or from time to time designate by written notice to the other Party given in accordance herewith. Notice shall be considered given when personally delivered or mailed, and shall be considered received in the earlier of the day on which such notice is actually received by the Party to whom it is addressed, or the third day after such notice is mailed.

City of Aurora: City of Aurora
 Attn: City Attorney
 15151 E. Alameda Pkwy.
 Suite 5300
 Aurora, CO 80012

District: Adonea Metropolitan District Nos. 1 and 2
 White, Bear & Ankele, Professional Corporation
 1805 Shea Center Drive, Suite 100
 Highlands Ranch, CO 80129

District: Cross Creek Metropolitan District Nos. 1-3
White, Bear & Ankele, Professional Corporation
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129

District: East Plains Metropolitan District
High Plains Metropolitan District
Beacon Point Metropolitan District
White, Bear & Ankele, Professional Corporation
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129

District: Rockinghorse Metropolitan District Nos. 1 and 2
White, Bear & Ankele, Professional Corporation
1805 Shea Center Drive, Suite 100
Highlands Ranch, CO 80129

8.2. Consent. Whenever any provision of this Agreement requires consent or approval of the Parties hereto, the same shall not be unreasonably withheld.

8.3. Amendments. No alterations, amendments or modifications hereof shall be valid unless executed by an instrument with the same formality as this Agreement. Neither this Agreement, nor any term hereof, can be changed, modified, or abandoned, in whole or in part, except by the instrument in writing, and no prior, contemporary, or subsequent oral agreement shall have any validity whatsoever. Amendments shall only be binding upon those parties executing the amendment.

8.4. Severability. If any clause or provision herein contained shall be adjudged to be insubstantial and invalid or unenforceable by a court of competent jurisdiction or by operation of any applicable law, such invalid or unenforceable clause or provision shall not affect the validity of the Agreement as a whole and all other clauses or provisions shall be given full force and effect.

8.5. Binding Effect. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and to their respective successors and permitted assigns.

8.6. Assignment and Delegation. Neither Party shall assign any of the rights nor delegate any of the duties by this Agreement without the written consent of the other Parties. Any attempted assignment or delegation not in conformance with this provision shall be void.

8.7. Applicable Laws. This Agreement shall be governed by and construed in accordance with the Constitution and laws of the State of Colorado.

8.8. Paragraph Headings. The paragraph headings are inserted herein only as a matter of convenience and reference and in no way are intended to be a part of this Agreement or to define, limit or describe the scope or intent of this Agreement or the particular paragraphs hereof to which they refer.

8.9. Singular and Plural. Whenever the context shall so require, the singular shall include the plural and the plural shall include the singular.

8.10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document. Each District that is party to a District IGA, may by its election become a party hereto by authorizing the Operating District to sign on its behalf. Such election shall be evidenced by a resolution adopted by each District granting authority to its Operating District to execute this Agreement or ratify execution hereof on its behalf.

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IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed
as of the day and year first hereinabove written.

CITY OF AURORA

By: _____
Mayor

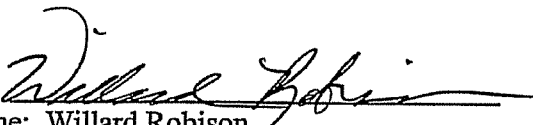
ATTEST:

By: _____
Clerk and Recorder

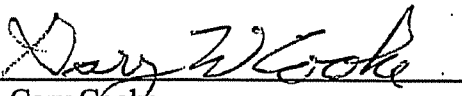
APPROVED AS TO FORM:

By: _____
City Attorney

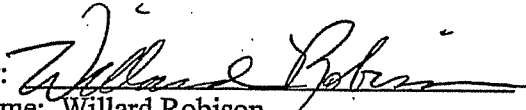
ADONEA METROPOLITAN DISTRICT NOS. 1
and 2 by ADONEA METROPOLITAN
DISTRICT NO. 1

By: 
Name: Willard Robison
Title: President

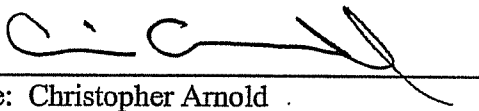
ATTEST:

By: 
Name: Gary Cooke
Title: Secretary/Treasurer

CROSS CREEK METROPOLITAN DISTRICT
NOS. 1-3 by CROSS CREEK METROPOLITAN
DISTRICT NO. 1

By: 
Name: Willard Robison
Title: President

ATTEST:

By: 
Name: Christopher Arnold
Title: Secretary/Treasurer

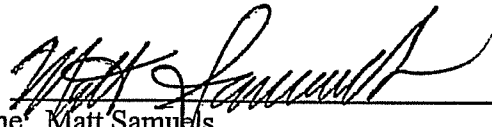
EAST PLAINS METROPOLITAN DISTRICT
HIGHPLAINS METROPOLITAN DISTRICT
BEACON POINT METROPOLITAN DISTRICT
By EAST PLAINS METROPOLITAN
DISTRICT

By: Gary W Cooke
Name: Gary Cooke
Title: Vice President

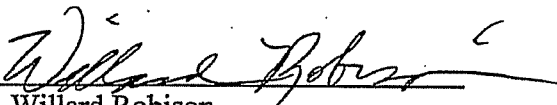
ATTEST:

By: Willard Robison
Name: Willard Robison
Title: Secretary/Treasurer

ROCKINGHORSE METROPOLITAN
DISTRICT NOS. 1 and 2 by ROCKINGHORSE
METROPOLITAN DISTRICT NO. 1

By: 
Name: Matt Samuel
Title: President

ATTEST:

By: 
Name: Willard Robison
Title: Secretary/Treasurer