

**FIRST AMENDMENT TO THE
SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY
ESTABLISHMENT AGREEMENT**

THIS FIRST AMENDMENT TO THE SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY ESTABLISHMENT AGREEMENT (the "First Amendment") is made and entered into effective the 2ND day of OCTOBER, 2018, by and among the City of Aurora (the "City"), Beacon Point Metropolitan District, Forest Trace Metropolitan District No. 1, Forest Trace Metropolitan District No. 2, Forest Trace Metropolitan District No. 3, High Plains Metropolitan District, Inspiration Metropolitan District, Kings Point Metropolitan District No. 1, Kings Point South Metropolitan District No. 1, Kings Point South Metropolitan District No. 2, Pronghorn Valley Metropolitan District, Sorrel Ranch Metropolitan District, Southlands Metropolitan District No. 2, Wheatlands Metropolitan District, and Whispering Pines Metropolitan District No. 1 (collectively, the "Districts") (the City and the Districts are collectively referred to herein as the "Parties").

RECITALS

WHEREAS, the South Aurora Regional Improvement Authority (the "Authority") is a separate legal entity, public corporation, and political subdivision of the State of Colorado organized pursuant to the South Aurora Regional Improvement Authority Establishment Agreement entered into by and among the Parties (together with any amendments, the "Establishment Agreement"); and

WHEREAS, pursuant to Section 9.03 of the Establishment Agreement, the Establishment Agreement may be altered, amended or modified only if approved by the Authority Board and executed by an instrument with the same formality as the Establishment Agreement; and

WHEREAS, in order to modify, clarify and update various components of the Establishment Agreement, the Parties mutually desire and agree to amend the Establishment Agreement as further set forth herein.

AMENDMENT

NOW THEREFORE, in consideration of the foregoing recitals, the Establishment Agreement, and the agreements, covenants, and undertakings set forth herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree to and hereby amend the Establishment Agreement as follows:

1. Recitals. The above recitals are hereby incorporated as if fully set forth herein.
2. District Signatures. Notwithstanding any inconsistency or ambiguity in the Establishment Agreement, and in particular any inconsistencies or ambiguities regarding the effective date of the Establishment Agreement and the District signatures on Exhibit A to the Establishment Agreement, each of the Parties agrees and affirms, for itself, that the Establishment Agreement was intended to be effective as of the date of execution, and it executed and entered

into the Establishment Agreement as of the following date, which date corresponds to the date on which a validly designated representative of each of the Districts and the City originally executed the Establishment Agreement:

City of Aurora:	July 10, 2017
Beacon Point Metropolitan District:	July 10, 2017
Forest Trace Metropolitan District No. 1:	July 10, 2017
Forest Trace Metropolitan District No. 2:	July 10, 2017
Forest Trace Metropolitan District No. 3:	July 10, 2017
High Plains Metropolitan District:	July 10, 2017
Inspiration Metropolitan District:	February 7, 2018
Kings Point Metropolitan District No. 1:	July 10, 2017
Kings Point South Metropolitan District No. 1:	July 10, 2017
Kings Point South Metropolitan District No. 2:	July 10, 2017
Pronghorn Valley Metropolitan District:	May 10, 2018
Sorrel Ranch Metropolitan District:	July 10, 2017
Southlands Metropolitan District No. 2:	July 10, 2017
Wheatlands Metropolitan District:	July 10, 2017
Whispering Pines Metropolitan District No. 1:	January 24, 2018

The Parties further acknowledge and agree that as of the date of this First Amendment, the foregoing list of entities represents the full and complete list of all Parties to the Establishment Agreement.

3. Additional Definitions. Section 1.01 of the Establishment Agreement is amended to include the defined term "Bond Trustee" and to amend the term "ARI Mill Levy," as follows:

"ARI Mill Levy" means the mill levy of a District designated as the "ARI Mill Levy" imposed and collected pursuant to its Service Plan, as such Service Plan may be amended or restated from time to time.

“Bond Trustee” means the entity designated by the Authority as the “trustee,” if any, in connection with the issuance of any bonds, notes or other financial obligations by the Authority, as reflected in the resolution or indenture of trust pursuant to which such obligations are issued.

4. Initial Contributions. The Parties acknowledge that the original version of the Establishment Agreement provided in Section 5.01, in part, “that on execution of this Agreement each Party which has imposed an ARI Mill Levy prior to the execution of this Agreement shall pay an initial contribution to the Authority in an amount equal to its pro-rata share of the initial budget attached to this Agreement as Exhibit D,” and that for various reasons the Establishment Agreement did not originally include an Exhibit D. Therefore, Section 5.01 of the Establishment Agreement is amended and replaced in its entirety with the following:

Section 5.01. Initial Contribution. The Board adopted the Authority ARI Master Plan Number One on December 8, 2017, and the Authority ARI Master Plan Number Two on June 15, 2018. The Parties agree that as of August 1, 2018, all Parties to the Agreement have fully satisfied their commitments to provide an initial contribution to the Authority. In the event additional Parties are added to the Authority consistent with the other provisions of this Agreement, such additional Parties may, in the discretion of the Board, be required to remit to the Authority an initial contribution in an amount determined by the Board.

Further, Exhibit D and all references thereto are stricken from the Establishment Agreement as no longer applicable to the provisions of the Establishment Agreement.

5. Remittance of Funds. Section 5.06 of the Establishment Agreement is amended and replaced in its entirety with the following:

Section 5.06. Remittance of Funds to Authority. At such time as a District (through its designated representative) and the Board have approved an ARI Master Plan, all proceeds of such District’s ARI Mill Levy (net of County treasurer collection costs and excluding any specific ownership taxes received by the District as a result of its imposition of the ARI Mill Levy) will be required to be transferred to the Authority within 30 days of receipt by such District. Notwithstanding the foregoing, (a) with the exception of the initial contributions as described in Section 5.01, ARI Mill Levy revenue collected by a District prior to January 1, 2017 may be retained by the District to be used for any lawful purpose of the District, and (b) at any time that the Authority has bonds, notes or other financial obligations outstanding, each District shall transfer all proceeds of such District’s ARI Mill Levy either to the Authority or directly to the Bond Trustee rather than to the Authority as directed by the Authority, as applicable.

6. Revenue Bonds. Section 5.07 of the Establishment Agreement is amended to add the following at the end of Section 5.07:

Notwithstanding the foregoing, the Authority is permitted to issue such revenue bonds pursuant to an indenture of trust entered into with a Bond Trustee, so long as such indenture of trust is approved pursuant to a written resolution approved by the Board.

7. ARI Mill Levy. The second paragraph of Section 5.08 of the Establishment Agreement is amended to add the following:

Each District hereby covenants to impose the ARI Mill Levy each levy year in an amount not less than the number of mills required to be imposed by such District as the District's ARI Mill Levy in such levy year as set forth in such District's Service Plan as such Service Plan exists on the date of execution of this First Amendment (and notwithstanding any future amendment or restatement of the District's Service Plan).

8. Funding Obligations. Section 5.10 of the Establishment Agreement is amended and replaced in its entirety with the following:

Section 5.10. Authority Reliance; Funding Obligations Pending Dispute Resolution. Each District agrees that its funding obligations set forth in this Agreement are absolute, irrevocable, unconditional and irrevocable within the meaning of Article XI, Section 6 of the Colorado Constitution. The Districts agree that their authority to modify this Agreement is limited so as to prohibit a repeal of the funding obligations in this Agreement. The Districts each agree, notwithstanding any fact, circumstance, dispute, or any other matter, that they will not take or fail to take any action which would delay a payment to the Authority or impair the Authority's ability to receive payments due hereunder.

Each District acknowledges that the Authority may issue revenue bonds and the Authority may obtain financial commitments and security for its bonds from third parties, all of whom shall be relying on performance of the payment obligations of each of the Districts hereunder.

The purpose of this Section is to ensure that the Authority receives all payments due under this Agreement in a timely manner so that the Authority may pay its bonds, notes or other financial obligations. Each District agrees that during the pendency of any litigation which may arise hereunder, all payments required hereunder shall be made by such District for the purpose of enabling the Authority to make payments on the Authority's bonds or other financial obligations issued pursuant to Section 5.07 hereof. If a District believes it has valid defenses, setoffs, counterclaims, or other claims, it shall nevertheless make all payments to the

Authority as described in this Agreement under protest, stating the reasons therefor, and seek to recover such payments by separate actions at law or in equity for damages or specific performance.

9. Default; Remedies. Section 8.02 of the Establishment Agreement is amended and replaced in its entirety with the following:

Section 8.02. Remedies on Occurrence of Events of Default. Upon the occurrence of an Event of Default, the Parties, the Authority and the Bond Trustee (as a third party beneficiary hereunder) shall have the following rights and remedies:

(a) The non-defaulting Parties, the Authority or the Bond Trustee, of any combination of the foregoing, may request a court of competent jurisdiction to issue a writ of mandamus or order any similar or equivalent relief, to compel the board of directors of the defaulting Party to perform its duties under this Agreement, and/or to issue temporary and/or permanent restraining orders, or orders of specific performance, to compel the defaulting Party to perform in accordance with this Agreement.

(b) The non-defaulting Parties, the Authority or the Bond Trustee may protect and enforce their rights under this Agreement by such suits, actions, or special proceedings as they shall deem appropriate, including, without limitation, any proceedings for the specific performance of any covenant or agreement contained in this Agreement, for the enforcement of any other appropriate legal or equitable remedy, or for the recovery of damages, including attorneys' fees and all other costs and expenses incurred in enforcing this Agreement.

(c) The non-defaulting Parties shall have the right to budget, advance and expend funds as necessary to enforce the terms of this Agreement.

10. Further Amendments. Section 9.03 of the Establishment Agreement is amended and replaced in its entirety with the following:

Section 9.03. Amendments. No alterations, amendments or modifications hereof shall be valid unless approved by the Board and executed by an instrument with the same formality as this Agreement; provided, however, that the Parties may not alter, amend or modify this Agreement unless such alteration, amendment or modification is permitted by, and in full compliance with, the terms of any bond resolutions, indentures, loan agreements or other documents pursuant to which the Authority has issued bonds, notes or other financial obligations. 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.

11. Assignment and Delegation. Section 9.06 of the Establishment Agreement is amended to add the following:

Notwithstanding the foregoing, the Authority is expressly permitted to assign to the Bond Trustee all right, title and interest of the Authority in revenues resulting from the ARI Mill Levy payable to it hereunder, and all rights of the Authority to enforce payment of the same in accordance with the terms hereof.

12. Third Party Beneficiaries. Section 9.11 of the Establishment Agreement is amended and replaced in its entirety with the following:

Section 9.11. No Third Party Beneficiaries. Except as provided below in this Section, it is expressly understood and agreed that enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the Parties and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party on such Agreement. It is the express intention of the Parties that any person other than Parties receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only. Notwithstanding the foregoing, the Bond Trustee is expressly made a third party beneficiary hereunder.

13. Notice Addresses. The Parties hereby update and notify each other, and each affirms the receipt of such notification from the others, of the Parties' respective addresses for the purposes of receiving notices pursuant to Section 9.01 of the Establishment Agreement as set forth in the signature pages to this First Amendment.

14. Exhibits. Exhibits B and C to the Establishment Agreement are amended and replaced in their entirety by Exhibits B and C attached hereto and incorporated by reference herein.

15. Validity of Agreement; No Modification. Except as expressly provided herein, the Establishment Agreement shall remain in full force and effect and is not otherwise modified, changed, or amended by this First Amendment.

16. Counterparts; Signatures. This First Amendment may be executed in multiple counterparts. All counterparts so executed shall constitute one agreement binding upon all parties, notwithstanding that all parties are not signatories to the original or the same counterpart. Documents executed, scanned and transmitted electronically and electronic signatures shall be deemed original signatures for purposes of this First Amendment and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

17. Headings. The section headings contained in this First Amendment are for


reference purposes only and shall not affect the meaning or interpretation of this First Amendment or the Establishment Agreement.

18. Capitalized Terms. All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Establishment Agreement.

IN WITNESS WHEREOF, the Parties have each caused this First Amendment to be executed and delivered by a duly authorized representative effective as of the last date set forth below.

[remainder of page intentionally left blank; signature pages and Exhibits follow]

CITY OF AURORA

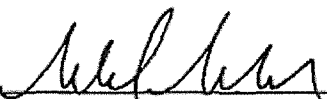
By:  Dated: 10-2-18
Bob LeGare, Mayor

Notice Addresses:


City of Aurora
Director of Public Works
15151 E. Alameda Parkway, 3rd Floor
Aurora, CO 80012
(303) 739-7300

City of Aurora
City Attorney
15151 E. Alameda Parkway, 5th Floor
Aurora, CO 80012
(303) 739-7030

Attested:

By: 
Michael Lawson, Interim City Clerk

Approved as to Form:

By: 
Michelle Gardner, Assistant City Attorney

BEACON POINT METROPOLITAN DISTRICT

By: 

Name: O. Karl Kaach

Title: President

Date: 8.30.18

Notice Address:

WHITE BEAR ANKLE TANAKA! WALOWI
ATTN: JENNIFER GRUBER TANAKA, ESQ
2154 E. Commons Ave, #2000
CENTENNIAL, CO 80122

Phone: 303 858 1800

Email: jtahaka@wbapc.com

Facsimile: 303 858 1801

FOREST TRACE METROPOLITAN DISTRICT NO. 1

By: [Signature]

Name: Richard Frank

Title: VP

Date: 9-28-18

FOREST TRACE METROPOLITAN DISTRICT NO. 2

By: [Signature]

Name: Richard Frank

Title: VP

Date: 9-20-18

FOREST TRACE METROPOLITAN DISTRICT NO. 3

By: [Signature]

Name: Richard Frank

Title: VP

Date: 9-20-18

Notice Address (Forest Trace Metropolitan District Nos. 1-3):

White Bear Ankele Tanaka & Waldron

2154 E Commons Ave, Suite 2000


Centennial, CO 80122

Phone: 303 858 1800

Email: cwaldron@wbapc.com

Facsimile: 303 858 1801

HIGH PLAINS METROPOLITAN DISTRICT

By:  _____

Name: Kevin McGlynn

Title: President

Date: August 28, 2018

Notice Address:

Summit Management & Consulting, Attn: Irene Borisov

9101 E Kenyon Ave., Suite 1200, Denver, CO 80237

C/O White Bear Ankele Tanaka & Waldron

Attn: Clint Waldron

2154 E Commons Ave., Suite 2000, Centennial, CO 80122

Phone: 303-459-4919 (Summit) 303-858-1800 (WBA)

Email: irene@sammgt.com; cwaldron@wbapc.com

Facsimile: 303-484-9742 (Summit) 303-858-1801 (WBA)

INSPIRATION METROPOLITAN DISTRICT

By: SC Thomas

Name: Sandra C. Thomas

Title: President

Date: August 27, 2018

Notice Address:

WHITE BEAR ANKELE TANAKA & WALDRON

Attorneys at Law

2154 East Commons Avenue, Suite 2000

Centennial, Colorado 80122

Attention: Kristin Tompkins, Esq.

Phone: (303) 858-1800

Email: ktompkins@wbapc.com

Facsimile: (303) 858-1801

KINGS POINT METROPOLITAN DISTRICT NO. 1

By: 

Name: Bruce Stokes

Title: President

Date: 9/28/2018

Notice Address:

McGee & Becker P.C.

450 E. 17th Ave.

Suite 400

Denver, CO 80203

Mary Ann McGee

Phone: 303/592-4380

Email: mmcgee@specialdistrictlaw.com

Facsimile: 303/592-4385

**ADDENDUM TO SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY
ESTABLISHMENT AGREEMENT (AS AMENDED)**

ADDITIONAL DISTRICT SIGNATURES AND NOTICE INFORMATION

IN WITNESS WHEREOF, the undersigned hereby executes and agrees to the South Aurora Regional Improvement Authority Establishment Agreement, as amended by the First Amendment to the South Aurora Regional Improvement Authority Establishment Agreement dated September 28, 2018, effective as the date set forth below.

DISTRICTS:

KINGS POINT METROPOLITAN DISTRICT NO. 2


By: 

Name: Bruce Stokes

Title: President

Date: September 28, 2018

KINGS POINT METROPOLITAN DISTRICT NO. 3

By: 

Name: Bruce Stokes

Title: President

Date: September 28, 2018

NOTICE ADDRESS (Kings Point Metropolitan District Nos. 2 and 3):

McGeady Becker P.C.

450 E. 17th Ave.

Suite 400

Denver, CO 80203

Attn: Mary Ann McGeady

Phone: 303/592-4380

Email: mmcgeady@specialdistrictlaw.com

Fax: 303/592-4385

KINGS POINT SOUTH METROPOLITAN DISTRICT NO. 1

By: [Signature]
Name: JERRY H. WEIGAND
Title: VP SEC
Date: 9-5-18

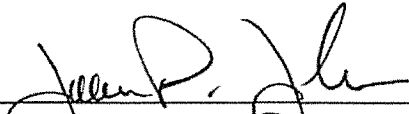
KINGS POINT SOUTH METROPOLITAN DISTRICT NO. 2

By: [Signature]
Name: JERRY H. WEIGAND
Title: VP SEC
Date: 9-5-18

Notice Address:

White Bear Ankele Tanaka & Waldron
2154 E Commons Ave., Suite 2000
Centennial, CO 80122
Attn: Blair M. Dickhoner, Esq.
Phone: 303-858-1800
Email: bdickhoner@wbapc.com
Fax: 303-858-1801

PRONGHORN VALLEY METROPOLITAN DISTRICT

By: 
Name: Lawrence P. Jacobson
Title: President
Date: 8/29/18

{00362722}

SORREL RANCH METROPOLITAN DISTRICT

By: DR

Name: DAVID BOOKE

Title: TREASURER

Date: 11 SEP 18

Notice Address:

MCGEADY BECHER P.C.

450 E 17th AVE

SUITE 400

DENVER CO 80203

ATTN: MEGAN BECHER

Phone: 303-592-4380

Email: MIBECHER@SPECIALDISTRICTLAW.COM

Facsimile: 303-592-4385

SOUTHLANDS METROPOLITAN DISTRICT NO. 2

By: 

Name: Kevin McGlynn

Title: President

Date: 9/11/18

Notice Address:

Special District Management Services, Inc.

141 Union Blvd, Suite 150

Lakewood, CO 80228

c/o White Bear Ankele Tanaka & Waldron, Attorneys at Law

2154 E Commons Ave., Suite 2000, Centennial, CO 80122

Phone: 303-987-0835; 303-858-1800

Email: afinn@sdmsi.com; cwaldron@wbapc.com

Facsimile: WBA: 303-858-1801

WHEATLANDS METROPOLITAN DISTRICT

By: [Signature]

Name: JOHN LENT

Title: PRESIDENT

Date: 9/7/18

Notice Address:

YMCA of Metropolitan Denver, Attn: Kimberly Armitage
27151 E Lakeridge Dr.

Aurora, CO 80016


c/o White Bear Ankele Tanaka & Waldron
2154 E. Commons Ave, Suite 200, Centennial, CO 80122

Phone: 720-870-2221 (YMCA) 303-858-1800 (WBA)

Email: karmitage@denverymca.org; cwaldron@wbapc.com

Facsimile: 303-858-1801

WHISPERING PINES METROPOLITAN DISTRICT NO. 1

By: 
Name: DARIA J NICKLESS
Title: Pres.
Date: AUGUST

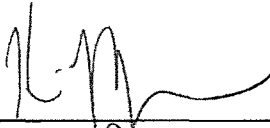
Notice Address:

Teleos Management Group
Attn: Angela Elliott
191 University Boulevard, #358
Denver, CO 80206

Phone: 303-818-9365
Email: angela@teleos-services.com
Facsimile:

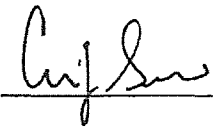
**APPROVAL BY THE BOARD OF DIRECTORS OF THE
SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY**

The foregoing FIRST AMENDMENT TO THE SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY ESTABLISHMENT AGREEMENT is hereby approved by the Board of Directors of the South Aurora Regional Improvement Authority the 28th day of September, 2018.



Kevin McGlynn, President

ATTEST:

By:  _____

Name: _____

Its: _____

EXHIBIT A

[INTENTIONALLY OMITTED]

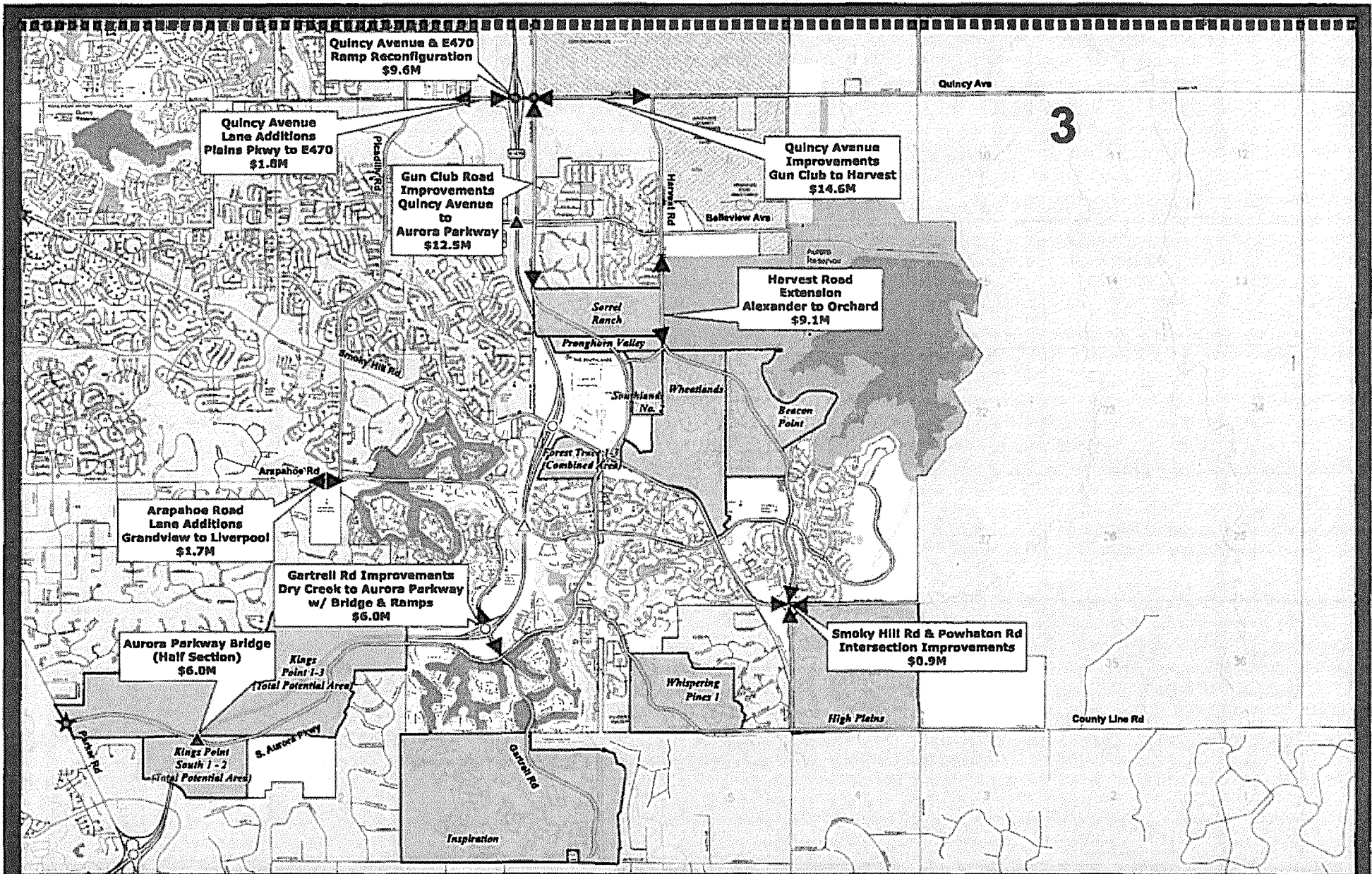
EXHIBIT B

REGIONAL IMPROVEMENTS

Project	Estimated Cost (May 18, 2018)
Harvest Road Improvements —Alexander to Orchard	\$9,100,000
Smoky Hill and Powhatan Road Infrastructure Improvements	900,000
Quincy Avenue Improvements —Gun Club to Harvest	14,600,000
Gartrell Road Improvements —Dry Creek to Aurora (with Bridge and Ramps)	6,000,000
Aurora Parkway Extension —Half Section Bridge	6,000,000
Arapahoe Road Lane Additions —Grandview to Liverpool	1,700,000
Gun Club Road Improvements —Quincy to Aurora Parkway	12,500,000
Aurora Parkway Lane Additions	[to be completed by others]
Quincy Avenue Lane Additions —Plains to E-470	1,800,000
Quincy & E-470 Ramp Reconfiguration	9,600,000
<hr/>	
Total	\$62,200,000

EXHIBIT C
BOUNDARY MAP
(Map of Districts' Boundaries and Regional Improvements)

*[attach South Aurora Regional Improvement Authority Member Districts and Master Plan No. 2
Projects map, dated August 7, 2018]*



Public Works Department
15151 E. Alameda Pkwy
Aurora CO 80012 USA
www.aurora.gov.org
303-739-7000
GIS@aurora.gov.org



Map Data: City of Aurora, Colorado
Aurora is Worth Discovering!
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City of Aurora, Colorado

South Aurora Regional Improvement Authority Member Districts and Master Plan No. 2 Projects

September 18, 2018



Aurora is Worth Discovering!



EXISTING INFRASTRUCTURE

- △ Grade-Separated Crossing
- ☆ Intersection Treatments (TBD)
- Roadway Interchange

PLANNED INFRASTRUCTURE

- △ Grade-Separated Crossing
- ☆ Intersection Treatments (TBD)
- Roadway Interchange

Major Arterials

- Member Districts
- City of Aurora
- Unincorporated County Area