

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF AURORA AND
INSPIRATION METROPOLITAN DISTRICT REGARDING
TRANSMISSION LINE PROJECT IMPACTS**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this 13th day of August 2019 (the “Effective Date”), by and between the CITY OF AURORA, COLORADO, a home rule municipal corporation of the State of Colorado (the “City”), and Inspiration Metropolitan District, a quasi-municipal corporation and political subdivision of the State of Colorado (the “District”), (the City and District may be collectively referred to herein as the “Parties” or individually as a “Party”).

RECITALS

WHEREAS, the Parties, as Colorado governmental entities, are constitutionally and statutorily empowered pursuant to Colo. Const., Article XIV, §18, and Sections 29-1-201, *et seq.*, C.R.S., to cooperate or contract via intergovernmental agreement with one another to provide functions, services, or facilities authorized to each cooperating government; and

WHEREAS, in 2017, pursuant to C.R.S. § 29-20-108(4)(a), a public utility company, Public Service Company of Colorado, dba Xcel Energy (the “Company”) notified the City of its plans to construct the Pawnee to Daniels Park 345-KV Transmission Line Project within its transmission line corridor (the “Project”) and within the City’s jurisdictional boundaries; and

WHEREAS, in 2017, the Company submitted an application for site plan approval pursuant to Chapter 146, Article 4, Division 3 of the Aurora City Code for the Project; and

WHEREAS, the Aurora City Code provides that public utility uses may be permitted in the City upon approval and subject to such reasonable conditions related to the impact of the Project as may be imposed by the City; and

WHEREAS, the City by and through its Planning and Zoning Commission approved the Company’s application for the Project in December 2017; and

WHEREAS, the Company initiated an extensive public outreach program in July, 2013, including the creation of a Project website, and hosting several public open houses and numerous separate meetings with nearby city residents, non-governmental organizations, homeowner organizations and other stakeholders during which the Company shared information on the purpose, impacts and benefits of the Project, and listened to concerns expressed by various groups and individuals; and

WHEREAS, meetings were held between the City staff and the Company to discuss impacts associated with the Project (the “Project Impacts”) and capable measures to address the City’s concerns and those expressed by its residents in order to mitigate the Project Impacts; and

WHEREAS, specific mitigation requests (the “Mitigation Measures”) were presented to the Company during the meetings which addressed the Project Impacts identified by the City and the Company’s public outreach efforts; and

WHEREAS, it is a goal of the Company and the City to mitigate the Project Impacts as mutually identified and agreed upon, with the City implementing the Mitigation Measures; and

WHEREAS, the City has identified adjacent residents of several Title 32 special districts and one homeowner association (the “Participant” or “Participants”) potentially impacted visually or by connectivity as a result of the Project and, therefore, eligible to receive designated mitigation program funds (“Program Funds”); and

WHEREAS, the Participants and their respective residents, constituents, taxpayers, and customers will jointly benefit from the Mitigation Measures for the Project by receipt and use of the Program Funds; and

WHEREAS, the District has been identified as a Participant to receive Program Funds and desires to receive and use the Program Funds as set forth in this Agreement.

NOW THEREFORE, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto hereby covenant and agree as follows:

AGREEMENT

1. **RECITALS.** The foregoing recitals are hereby incorporated and fully set forth herein.

2. **ELIGIBLE PROGRAM FUNDS TO PARTICIPANTS.**

- A. **Residence Landscape Screening.** The landscape barrier program provides funds for owners of single family residential lots which are located within 100 feet of the Project. Qualified lot owners may be eligible for reimbursement up to \$500.00 for the installation of new trees and/or other appropriate landscaping to help create ground-level screening of the Project. New trees and landscaping materials funded under this program shall be compatible with the adjacent utility facilities located in the Project boundaries and shall not interfere with the Company’s operation.
- B. **Vegetation Growth Enhancement.** The vegetation growth enhancement program provides funds targeted to increase the viability of plant materials and native species grasses along selected segments of the Project.

3. **ALLOCATION OF PROGRAM FUNDS BY CITY.**

- A. **General.** The City agrees to allocate Program Funds to Inspiration Metropolitan District as follows:

1. Program Funds in the amount of \$4,500 for Residence Landscape Screening, as detailed above.

2. Program funds in the amount of \$76,000 for Vegetation Growth Enhancement, as detailed above.

B. Term of Agreement and Termination. This Agreement between the Parties shall be effective as of the Effective Date identified above and shall terminate upon final payment of the Program Funds by the City to the District. Program Funds shall be allocated on or before December 31, 2019.

4. ANNUAL APPROPRIATIONS ONLY. It is expressly understood and agreed that the Parties are political subdivisions of the State of Colorado, and any and all financial obligations described hereunder, including but not limited to the Project Funds, are subject to annual appropriations of the respective Parties and do not establish debts or other multi-fiscal year obligations thereof.

5. BREACH AND ENFORCEMENT. It is specifically understood that, by executing this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained herein and that the failure of any Party to fulfill any obligation set forth herein shall constitute a breach of this Agreement. The Parties agree that this Agreement may be enforced in law or in equity for specific performance, injunctive, or other appropriate relief, as may be available according to the laws of the State of Colorado.

6. MISCELLANEOUS.

A. Assignment. The Parties hereto may not assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the other Party. Any attempt to assign this Agreement in the absence of such written consent shall be null and void *ab initio*.

B. Time is of the Essence. The Parties acknowledge that time is of the essence in the performance of this Agreement.

C. No Partnership or Agency. Notwithstanding any language in this Agreement or any representation or warranty to the contrary, the Parties shall not be deemed or constitute partners, joint venture participants, or agents of the other. Any actions taken by the Parties pursuant to this Agreement shall be deemed actions as an independent contractor of the others.

D. No Third-Party Beneficiaries. 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. It is the express intention of the Parties that any person or entity other than the Parties shall be deemed to be only an incidental beneficiary under this Agreement.

E. Governmental Immunity. Nothing in this Agreement or in any actions taken by the Parties or their respective elected officials, directors, officers, agents and employees

pursuant to this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions of the Colorado Governmental Immunity Act, Sections 24-10-101, *et seq.*, C.R.S.

F. No Personal Liability. No elected official, director, officer, agent or employee of the Parties shall be charged personally or held contractually liable under any term or provision of this Agreement, or because of any breach thereof or because of its or their execution, approval or attempted execution of this Agreement.

G. Notices. Any notices or other communications required or permitted by this Agreement or by law to be served on, given to, or delivered to any Party hereto by another Party shall be in writing and shall be deemed duly served, given, or delivered when personally delivered to the Party to whom it is addressed or, in lieu of such personal services, when received in the United States mail, first-class postage prepaid addressed to:

If to the District:

Inspiration Metropolitan District
Attn: Kristin Tompkins
White Bear Ankele Tanaka & Waldron
2154 E Commons Ave, Ste 2000
Centennial, CO 80122

If to the City:

City of Aurora
Attn: Director of Finance
15151 E. Alameda Parkway
Aurora, CO 80012

Any Party may change its address for the purpose of this section by giving written notice of such change to the other Party in the manner provided in this section.

H. Controlling Law and Venue. This Agreement shall be construed in accordance with the laws of the State of Colorado. In the event of any dispute between the Parties, the exclusive venue for dispute resolution shall be the District Court for and in Arapahoe County, Colorado.

I. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed to constitute a waiver of any other of the provisions of this Agreement, nor shall such waiver constitute a continuing waiver unless otherwise expressly provided herein, nor shall the waiver of any default hereunder be deemed a waiver of any subsequent default hereunder.

J. Binding Contract. This Agreement shall inure to and be binding on the successors and permitted assigns of the Parties.

K. Entire Contract. This Agreement constitutes the entire agreement between the Parties with regard to the Project and sets forth the rights, duties, and obligations of each to the other as of this date. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the Project are of no force and effect.

L. Contract Modification. This Agreement may not be amended, altered, or otherwise changed except by a written agreement between the Parties.

M. Severability. The invalidity or unenforceability of any portion or previous version of this Agreement shall not affect the validity or enforceability of any other portion or provision. Any invalid or unenforceable portion or provision shall be deemed severed from this Agreement and, in such event, the Parties shall negotiate in good faith to replace such invalidated provision in order to carry out the intent of the Parties in entering into this Agreement.

N. Counterpart Execution. This Agreement 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 Agreement and all matters related thereto, with such scanned and electronic signatures having the same legal effect as original signatures.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written. By the signature of its representative below, each Party affirms that it has taken all necessary action to authorize said representative to execute this Agreement.

[signature pages follow]

CITY OF AURORA

By: _____
Bob LeGare, Mayor

Dated: _____

Attested:

By: _____
Stephen J. Ruger, City Clerk

Approved as to Form:

By: _____
Michelle Gardner, Assistant City Attorney

INSPIRATION METROPOLITAN DISTRICT

By: AC Thomas

Name: Sandra C Thomas

Its: Board President

Date: 8-13-19

ATTEST:

By: 

Name: Aaron Cartiss

Its: Vice President

INSPIRATION METROPOLITAN DISTRICT		
ADDRESS	CITY	ZIP
8600 S DE GAULLE CT	AURORA	80016
8660 S DE GAULLE CT	AURORA	80016
8630 S DE GAULLE CT	AURORA	80016
8650 S DE GAULLE CT	AURORA	80016
8640 S DE GAULLE CT	AURORA	80016
8670 S DE GAULLE CT	AURORA	80016
8610 S DE GAULLE CT	AURORA	80016
8620 S DE GAULLE CT	AURORA	80016
8680 S DE GAULLE CT	AURORA	80016