

## **Intergovernmental Agreement**

This Intergovernmental Agreement (“Agreement”) is made and entered into as of the Effective Date (as defined below) by and between the City of Aurora, Colorado, a Colorado municipal corporation of the counties of Adams, Arapahoe, and Douglas, acting by and through its Utility Enterprise (“Aurora”), and the City and County of Denver, a home rule city and municipal corporation of the State of Colorado (“Denver”). Aurora and Denver shall be referred to herein as “Party,” and collectively as “Parties.”

### **Witnesseth**

WHEREAS, the Parties are municipal corporations empowered by the Colorado Constitution, C.R.S. § 29-1-201, and in the case of Denver, the Charter of the City and County of Denver, and in the case of Aurora, the Aurora City Charter, to enter into and perform cooperative intergovernmental agreements; and

WHEREAS, Aurora, acting by and through its Utility Enterprise, provides domestic water and sanitary sewer service to property located within the corporate boundaries of Aurora; and

WHEREAS, Aurora and Denver have each entered into separate service contracts and other agreements with the Metropolitan Wastewater Reclamation District (“Metro Sewer”) relating to the provision of sewer service within their respective municipal boundaries; and

WHEREAS, Denver and Aurora are parties to that certain Agreement, dated April 7, 1998, as amended by the Amendment to Agreement, dated November 13, 2007 (“Original IGA”), whereby Denver agreed to allow Aurora to establish and maintain a connection to certain sewer facilities owned and maintained by Denver for Aurora to provide sewer service to its customers located within the areas specified in the Original IGA (“Original Service Area”);

WHEREAS, Aurora has requested a temporary extension of transmission capacity in the sanitary sewer lines operated by Denver to include flows from certain properties located within the corporate boundaries of Aurora (“Service Area”) as more particularly shown on Exhibit A attached hereto (“Area Map”); and

WHEREAS, Denver owns and maintains the sewer lift station known as the Gateway Lift Station (“GWLS”) as shown on the Area Map; and

WHEREAS, the GWLS discharges into the Tower Road Interceptor (as shown on the Area Map) (“Tower Road Line”), which is currently a private line that is owned and maintained by the Denver International Airport (“DEN”); and

WHEREAS, Denver and DEN are currently discussing a possible transfer of the Tower Road Line from DEN to Denver, and Denver currently anticipates that it will take ownership of the Tower Road Line sometime during the second quarter of 2018; and

WHEREAS, Denver is willing to provide flow capacity in their sewer infrastructure from and at the interconnections located at (a) the GWLS (subject to Denver's acquisition of the Tower Road Line) and (b) the intersection of 56<sup>th</sup> Avenue and Dunkirk Street to Denver's existing sanitary sewer line in 56<sup>th</sup> Avenue for flows generated from the Service Area in accordance with the terms and conditions set forth herein.

NOW THEREFORE, in consideration of the promises contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties mutually agree as follows, to wit:

### **1. Purpose of Agreement and General Obligations of the Parties.**

The purpose of this Agreement is to set forth the procedures by which Denver will provide a certain, limited amount of capacity in their sewer infrastructure, into which Aurora may discharge sewage flows generated from the Service Area, subject to the terms and limitations contained in this Agreement. The Parties each hereby acknowledge and agree that the Original IGA has expired and is no further force and effect. The Parties agree to cooperate in good faith for the purpose of assuring continuity of sewer service for Aurora to provide service to the Service Area, and providing for the administration and maintenance of the facilities needed to provide such conveyance of waste water flows. The infrastructure ("Denver Infrastructure") is more particularly described as follows:

As shown on the Area Map:

1. The Denver sewer main located in East 56<sup>th</sup> Avenue at approximately Dunkirk Street; and
2. The GWLS; and
3. The sewer line currently owned by DEN located in Tower Road from the GWLS to 56<sup>th</sup> Avenue.

(A) Denver does hereby grant to Aurora two (2) temporary connections to the Denver Infrastructure at (1) an agreed upon location near the GWLS (subject to Denver's acquisition of the Tower Road Line) ("GWLS Interconnection"), and (2) the existing connection at the intersection of 56<sup>th</sup> Avenue and Dunkirk Street ("Existing Connection" and referred to herein together with the GWLS Interconnection as the "Interconnections"). Aurora shall be responsible for all costs associated with the installation and use of the Interconnections and related facilities, including, without limitation, any necessary upgrades or improvements to the GWLS as may be needed to provide for the use contemplated herein by Aurora at the capacity levels shown on Exhibit B. The improvements currently known to be needed at the GWLS and to be provided by Aurora include the improvements and related work to be completed on phased basis as identified and described on Exhibit B attached hereto ("Phased Improvements"). The Phased Improvements shall be made by Aurora in accordance with the schedule of milestones set forth in Exhibit B. All Phased Improvements shall be subject to the prior review and approval of the Denver Manager of Public Works, including approvals through the Public Works Development Engineer Services

Sanitary and Storm Plan Review (SSPR) process, and in compliance with all applicable laws, codes, permits, technical specifications and standards maintained by the Denver Department of Public Works. Any and all Phased Improvements shall require payment and performance bonds for the full value of the work to be performed or other security consistent with normal procedures imposed by the Denver Manager of Public Works for similar projects. Aurora, or its general contractor, shall provide the construction warranties typically required by Denver for public infrastructure projects completed by third parties with respect to all portions of the Phased Improvements, and shall otherwise comply with all requirements under the SSPR process and other standard construction terms and conditions typically required by Denver. During the duration of any part of the Phased Improvements by Aurora during the Term of this Agreement, Aurora shall be responsible for the regular operation of the GWLS, and shall take steps necessary to ensure the continued functioning, use and availability of the GWLS at all times. Any additional GWLS capacity resulting from Phased Improvements constructed by Aurora will be available for Aurora use as long as within limits as set forth in Section 3B and as long as Denver continues to have the GWLS capacity available to convey all Denver developed flows up to the maximum existing capacity of 4.2 million gallons per day (MGD).

(B) During the Term of this Agreement, Denver agrees to furnish sewer capacity at the Interconnections to Aurora for the Service Area as needed by Aurora for all uses for which Denver has provisional rights, up to the maximum flow rate allowed in Section 3(B) below. Aurora may use the Interconnections and any other rights provided for herein only for the purpose of providing sanitary sewer service to the Service Area and for no other purposes or properties.

(C) The Metro Sewer flow meter at 56<sup>th</sup> Avenue and Dunkirk Street and the new Metro Sewer flow meter at approximately 66<sup>th</sup> Avenue and Dunkirk Street (“Metro Flow Meters”) will be used for flow measurement, flow triggers, and remaining capacity validation; provided that, if the Metro Flow Meters are not adequate or available to accurately measure, and provide the necessary information as determined by Denver in its sole discretion, Aurora shall cause any necessary new or additional meter(s) or other equipment to be installed and utilized and Aurora shall be responsible for the cost of such equipment and installation. The Parties shall provide for Metro Sewer to furnish the necessary information from the Metro Flow Meters directly to each Party on a regular basis.

(D) The Parties agree to meet biannually during the Term of this Agreement to review area development plans, the capacity of the Denver Infrastructure, and the status of Aurora’s plans for future conveyance of sanitary sewer service and related infrastructure plans.

(E) Aurora shall use its best efforts to develop sanitary sewer conveyance infrastructure, and disconnect fully from the Denver Infrastructure on or before that date which is seven (7) years after the Effective Date of this Agreement.

**2. Responsibilities of Aurora.** Aurora shall:

(A) Be responsible for the operation, maintenance, repair, and replacement of all Aurora sanitary sewer facilities within the Service Area and be responsible for all aspects of managing

customer services and billings to and for all customers receiving services through the Denver Infrastructure.

(B) Schedule and attend biannual meetings with Denver to review development progress and flow projections tributary to the Interconnections.

(C) Remain directly responsible to Metro Sewer for the collection and payment of all Metro Sewer fees pursuant to Aurora's service contract with Metro Sewer.

(D) When applicable, the industrial waste surcharge as calculated in accordance with the formula set forth in Section 56-94 of the Denver Revised Municipal Code, shall be paid in addition to all other amounts payable hereunder.

(E) During the Term of this Agreement, Aurora shall pay Denver for flows from the Service Area going into the Denver Infrastructure at the Interconnection at seventy-five percent (75%) of the rate charged to Denver's internal customers for waste water service (the portion of the rate charged to cover the costs to Metro Sewer have been excluded as these charges shall be paid directly to Metro Sewer by Aurora). Notwithstanding any term or provision of this Agreement to the contrary, in the event that Aurora has not, for any reason, fully disconnected from the Denver Infrastructure on or before the date specified in Section 1(E) above, in addition to any and all other rights and remedies available to Denver for such failure, the rate charged to Aurora from and after that date shall be equal to one-hundred percent (100%) of the rate charged to Denver's internal customers for waste water service (not including the amount that will continue to be separately payable hereunder by Aurora to Metro Sewer).

(F) Complete all Phased Improvements as required to comply with and complete all related planning, design, and construction milestones set forth in Exhibit B.

(G) Allow properties within the jurisdictional boundaries of Denver to be connected to the Second Creek Interceptor Segment 1E located downstream of the Metro Sewer flow meter as shown on Exhibit A.

(H) Binding Obligations of Aurora. Aurora represents that its acceptance of this Agreement and the performance of its obligations hereunder, have been duly authorized, executed, and delivered by Aurora and constitute a valid and legally binding obligation of Aurora, enforceable against Aurora in accordance with the terms hereof, subject only to the terms hereof and to applicable bankruptcy, insolvency, and similar laws affecting the enforceability of the rights of creditors generally and to general principles of equity.

**3. Obligations of Denver.** Denver shall:

(A) Subject to the limitations contained in Section 3(B), Denver shall permit Aurora to connect its sanitary sewer facilities, pursuant to the terms and conditions of this Agreement, to the Denver Infrastructure as allowed in Section 1(A) above. Notwithstanding any term or provision of this Agreement to the contrary, all obligations of Denver relating to the GWLS and the GWLS Interconnection shall be subject to the completion of the transfer and acceptance of the Tower

Road Line from DEN to Denver without regard to the reason for any failure of such a transfer to occur. Until the transfer is complete, the Parties shall proceed with this Agreement as to the Existing Interconnection only with the provisions relating to the GWLS Interconnection to take effect upon the transfer of the Tower Road Line to Denver. Denver shall advise Aurora from time to time as to the status of the transfer.

(B) Provide for the transportation of all sanitary sewage generated or arising from within the Service Area from the point of the Interconnections with the Denver Infrastructure to the point of connection to the lines and facilities of Metro Sewer up to a maximum of the lesser of (i) two (2) million gallons per day average (2 MGD), or (ii) five (5) million gallons per day peak (5 MGD). For example, if the average flow is 1.5 MGD and the peak day flow is 5 MGD, the maximum will have been reached. Aurora's exceeding the maximum flow rate shall be considered a material breach of this Agreement entitling Denver to any and all remedies therefor at law or in equity, including without limitation, the restriction on further connections by Aurora as provided for under Section 3(C) below.

(C) The DRMC prohibits any contract or agreement from impairing the ability of Denver properly to carry and treat the sanitary sewage furnished within Denver. Accordingly, in addition to any and all other remedies available to Denver, in the event of a breach by Aurora under this Agreement, upon receipt of notice from Denver, Aurora will immediately cease allowing any additional connections to be made within its municipal boundaries that will utilize any portion of the Denver Infrastructure.

(D) Provide for the ordinary maintenance of the Denver Infrastructure, including, if requested by Aurora and agreed to by Denver, permitting Aurora to provide assistance in responding to any emergency maintenance situations at or concerning the GWLS. In the event of any such assistance by Aurora, Denver shall reimburse Aurora for any direct third-party costs incurred by Aurora in providing such emergency work; provided that Denver receives a prior written cost estimate and supporting information.

#### **4. Inspections**

Denver, including such designees or invitees as it deems appropriate, shall have the right, but not the obligation, to inspect all Aurora property which Denver asserts may have any relevance to Aurora's connection to and use of the Sewer Infrastructure, including but not limited to, all lines, related facilities, videos, photographs, and other representations or information regarding such lines and facilities, audits, and other financial statements, as well as all books and records, including Aurora meeting minutes. Aurora, at Denver's expense, shall make all such matters available for inspection and copying at reasonable times and locations.

#### **5. Term and Termination**

(A) **Term.** The term of this Agreement ("Term") shall be for seven (7) years from the Effective Date of this Agreement. Denver may unilaterally terminate this Agreement upon the happening of any one of the following events:

- (1) Aurora's failure to timely and fully pay any fee or charge or other monetary obligation required to be paid by Aurora under this Agreement within sixty (60) days after written notice of nonpayment is given by Denver; or
- (2) The capacity limits set forth in Section 3(B) above are exceeded; or
- (3) After three hundred and sixty (360) days' written notice to Aurora from Denver that Denver has determined that the Sewer Infrastructure is incapable of safely or effectively transporting the sewage from the Service Area and Denver according to standards of ordinary and customary engineering judgement; or
- (4) Aurora's failure to fully perform any one or more of its other covenants under this Agreement within one hundred eighty (180) days after written notice to Aurora specifying the covenant or covenants Aurora has not performed.

**(B) Cooperation in the Event of Termination.** In the event of termination for any reason, the Parties agree to work cooperatively and in good faith to insure that the public health, welfare and safety is protected.

## **6. Representations**

**(A) Representations of Aurora.** Aurora represents to Denver:

**(1) Duly Elected and Appointed.** The City Council of Aurora and the officers executing this Agreement have been duly elected or appointed.

**(2) No Legal Actions.** There are no pending legal actions, administrative or other proceedings, or threatened or unsettled claims currently existing against Aurora which in any way relate to or which could in any way affect the proposed use of the Sewer Infrastructure

**(3) No Unauthorized Taps.** There are no known unauthorized sanitary sewer taps or violations or defaults in its contracts with Metro Sewer, and all tap fees have been timely paid, with respect to properties which may now or in the future utilize the Sewer Infrastructure for transportation of sewage.

**(4) Compliance with Laws.** To the best knowledge and belief of Aurora and its officers, Aurora is in full compliance with all laws, rules, and regulations which may be applicable to its existence and operations.

**(5) Authority.** Aurora has the authority to enter into this Agreement with Denver, and the undersigned have authority to execute this Agreement on behalf of Aurora.

**(6) Defects.** Aurora is unaware of any apparent, hidden or latent defects in any of its sewer lines, facilities, properties or property interests which in any way relate to or which could in any way affect the proposed use of the Sewer Infrastructure.

**(B) Representations of Denver.** Denver represents to Aurora:

**(1) No Legal Actions.** There are no pending legal actions, administrative or other proceedings, or threatened or unsettled claims currently existing against Denver which in way relate to or which could in any way affect the proposed use of the Sewer Infrastructure.

**(2) Authority.** The undersigned have authority to execute this Agreement on behalf of Denver.

## **7. Miscellaneous**

**(A) Best Efforts.** Denver and Aurora agree to work diligently together and in good faith, using their best efforts to resolve any unforeseen issues and disputes, and to meet the needs of the public and effect an orderly provision of service and the prompt and expeditious payment of fees and charges.

**(B) Entire Agreement.** This Agreement is intended as the complete integration of all understandings between the Parties. No prior or contemporaneous addition, deletion, or other amendment hereto shall have any force or effect whatsoever, unless embodied herein in writing. No subsequent novation, renewal, addition, deletion, or other amendment hereto shall have any force or effect unless embodied in a written amendatory or other agreement properly executed by the Parties. This Agreement and any amendments shall be binding upon the Parties, their successors and assigns.

**(C) No Third-Party Beneficiary.** 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 Denver and Aurora; and nothing contained in this Agreement shall give or allow any such claim or right of action by any other or third person on such agreements. It is the express intention of Denver and Aurora that any person other than Denver or Aurora receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

**(D) Counterparts of this Agreement.** This Agreement shall be executed in four (4) counterparts, each of which shall be deemed to be an original of this Agreement, and all of which, taken together, shall constitute one and the same instrument.

**(E) Severability.** Invalidation of any of the provisions of this Agreement or any paragraph, sentence, clause, phrase or word herein, or the application thereof in any given circumstance, shall not affect the validity of the remainder of the Agreement.

**(F) Paragraph Headings.** The captions and headings set forth herein are for convenience of reference only, and shall not be construed so as to define or limit the terms and provisions hereof.

**(G) Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado, the Charter and Revised Municipal Code of the City and County of Denver, as applicable, and the Charter and City Code of the City of Aurora, as applicable, without regard to any rule regarding choice of law.





**(K) Appropriations.** The obligations of Denver under this Agreement or any renewal shall extend only to monies appropriated annually by the Denver City Council, paid into the Treasury of the City, and encumbered for the purpose of the Agreement. The Parties acknowledge that (i) they do not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and (ii) this Agreement is not intended to create a multiple-fiscal year direct or indirect debt or financial obligation of the Parties, beyond the scope of this Agreement.

**(L) Sole Obligation of the Utility Enterprise.** Obligations in this Agreement shall never constitute a general obligation or other indebtedness of the City of Aurora, or a multiple fiscal year direct or indirect debt or other financial obligation whatsoever of the City of Aurora within the meaning of the Constitution and laws of the State of Colorado or of the Charter and Ordinances of the City of Aurora. In the event of a default by Aurora's Utility Enterprise of any of its obligations under this Agreement, Denver shall have no recourse for any amounts owed to it against any funds or revenues of the City of Aurora except for those revenues derived from rates, fees or charges for the services furnished by, or the direct or indirect use of, the Water System and deposited in the Waste Water Enterprise Fund, as the terms are defined in Aurora City Ordinance No. 2016-26, and then only after the payment of all operation and maintenance expenses of the Water System and all debt service and reserve requirements of any bonds, notes, or other financial obligations of the Utility Enterprise secured by a pledge of the net revenues of the Water Enterprise Fund. Notwithstanding any language herein to the contrary, nothing in this Agreement shall be construed as creating a lien upon any revenues of the Utility Enterprise or the City of Aurora.

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

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_  
Clerk and Recorder, Ex-Officio Clerk  
of the City and County of Denver

APPROVED AS TO FORM:

Attorney for the  
City and County of Denver

By \_\_\_\_\_  
Assistant City Attorney

By: \_\_\_\_\_  
Mayor

RECOMMENDED AND APPROVED:

By: \_\_\_\_\_  
Manager of Public Works

By: \_\_\_\_\_  
Deputy Manager of Public Works  
Wastewater Management Division

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_  
Auditor  
Contract Control No.



**Exhibit A: Area Map**

## **Exhibit B: Phased Improvements**

**Contract Control Number:**

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of

SEAL

**CITY AND COUNTY OF DENVER**

ATTEST:

By \_\_\_\_\_

\_\_\_\_\_

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



CITY OF AURORA, COLORADO,  
ACTING BY AND THROUGH ITS  
UTILITY ENTERPRISE

*Bob LeGare*

Bob LeGare, Mayor

7-10-18

Date

ATTEST:

*Janice Napper*  
Janice Napper, Acting City Clerk

7/10/18

Date

APPROVED AS TO FORM FOR AURORA:

*Christine McKenney*

Christine McKenney  
Senior Assistant City Attorney

6/20/18

Date

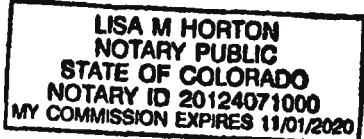
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STATE OF COLORADO    )  
                                          ) ss  
COUNTY OF ARAPAHOE )

The foregoing instrument was acknowledged before me this 11<sup>th</sup> day of July, 2018, by Bob LeGare, Mayor, acting on behalf of the Utility Enterprise of the City of Aurora, Colorado.

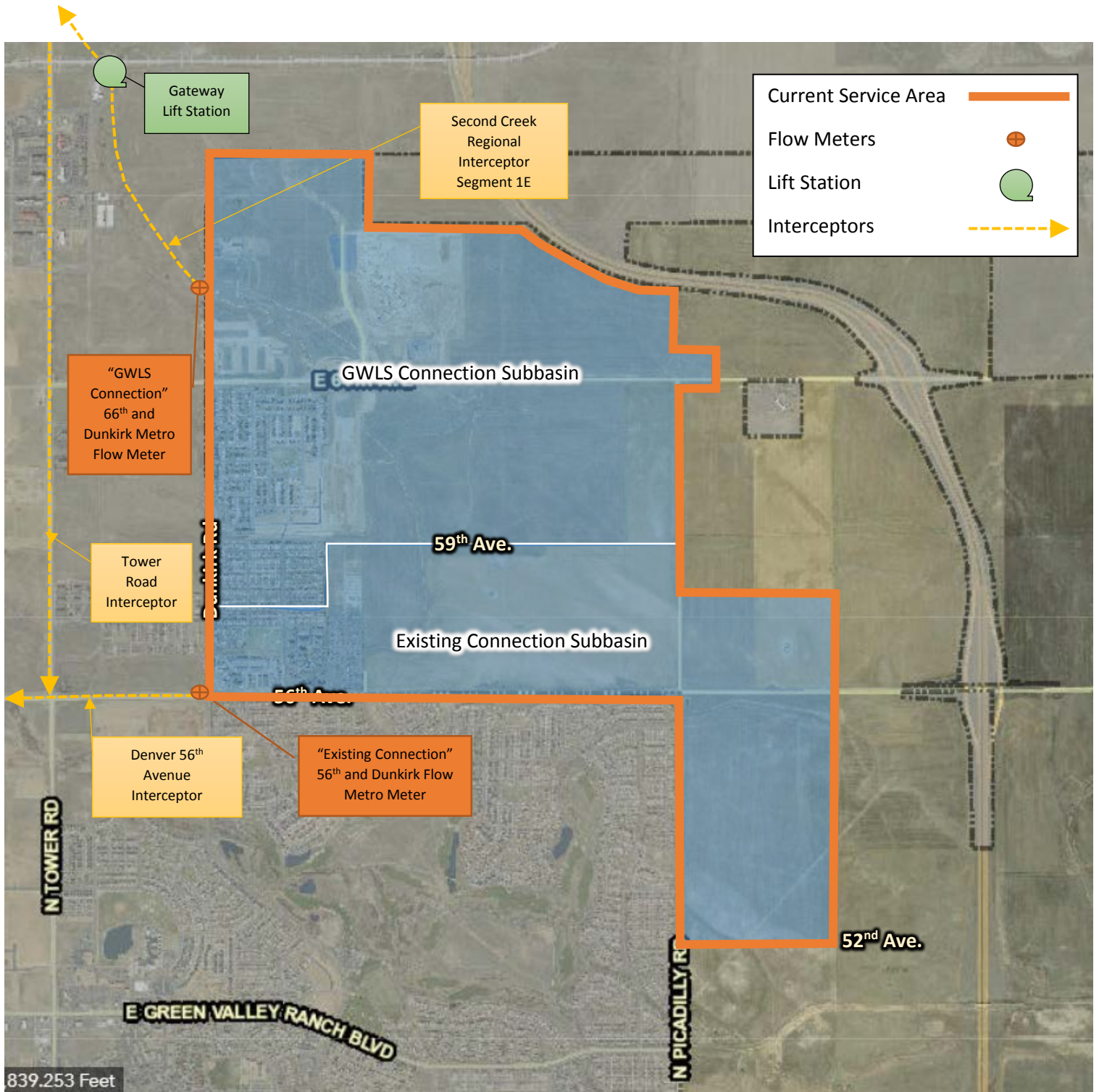
Witness my hand and official seal. *Lisa M. Horton*  
Notary Public

My commission expires: 11/01/2020

(SEAL) 



# Exhibit A: Area Map





## Exhibit B: GWLS Improvements

Phase	Action	Estimated Timing	Gateway LS Peak Conveyance Capacity	Approx. Capital Cost**
1	Initial Improvements: Install flow meter and provide level sensor.	Prior to Gateway Lift Station connection	4.2 mgd	\$20k
2	Install 3 <sup>rd</sup> Forcemain Connection point	3 Q 2018 or 2019	4.2 mgd	\$100k
3	Build 3 <sup>rd</sup> Parallel Gateway Force Main (3700 LF, 16" dia.)	Begin implementing phase when metered flows are at 50% of previous phase capacity. No additional connections allowed when the station reaches 70% capacity.	~5.9 mgd	~\$2M
4	Add Pumping Capacity to Gateway LS	Begin implementing phase when metered flows are at 50% of previous phase capacity. No additional connections allowed when the station reaches 70% capacity.	~7.2 mgd	~\$1.6M