

FIRST AMENDMENT TO COOPERATIVE AGREEMENT

(3400 Arkins Court, “Interstate Building”)

THIS FIRST AMENDMENT TO COOPERATIVE AGREEMENT (the “First Amendment”) is entered into and effective as of the date of execution by the City by and between the CITY AND COUNTY OF DENVER, a municipal corporation of the State of Colorado (the “City”), and RINO ART DISTRICT, a Colorado nonprofit corporation (“Art District”), with an address of 3501 Wazee Street, Suite 109, Denver, Colorado 80216 (City and Art District may each be referred to herein as a “Party” and collectively as the “Parties”).

RECITALS

WHEREAS, the Parties previously entered into that certain Cooperative Agreement between the City and County of Denver, Colorado and RiNo Art District Regarding Buildings Located at 1900 and 1950 35th Street, executed on February 18, 2021 (the “**Cooperative Agreement**”);

WHEREAS, pursuant to the Cooperative Agreement, as amended, Art District continues to maintain, administer, manage, operate and control certain buildings adjacent to the unnamed Arkins Court Park (the “Park”), which buildings are more particularly described as an approximately 3,204 square foot building, with an address of 1900 35th Street, and an approximately 10,127 square foot building, with an address of 1950 35th Street, both commonly referred to as the “**EEB Buildings**”; and

WHEREAS, the City intends to renovate, or cause the Art District to renovate, as provided herein, a certain building located within the Park, which building is more particularly described as an approximately 7,068 square foot building, with an address of 3400 Arkins Court, Denver, Colorado 80216, and commonly known as the “**Interstate Building**”; and

WHEREAS, the Parties have agreed by an Assignment Agreement, executed on November 7, 2022 (the “**Interstate Building Assignment Agreement**”), that Art District will design, construct, renovate and improve the Interstate Building, and once completed to the City’s satisfaction and approval, Art District will thereafter occupy, operate and manage the Interstate Building for the benefit of the City, the Art District and the general public, as further set forth herein; and

WHEREAS, the Parties mutually desire to enter into this First Amendment in order to amend the Cooperative Agreement to include the Interstate Building as further set forth herein.

NOW, THEREFORE, in consideration of the mutual agreements contained in the Cooperative Agreement and this First Amendment, and subject to the terms and conditions stated in the Cooperative Agreement and this First Amendment, the Parties agree as follows:

1. All references to “Exhibit A” in the Cooperative Agreement shall be amended to read “Exhibit A-1”. Exhibit A to the Cooperative Agreement is hereby superseded and replaced in its entirety with Exhibit A-1, attached to this First Amendment and incorporated by reference herein.

2. Paragraph 25(p) of the Cooperative Agreement entitled “Confirmation of Lawful Employment” is hereby repealed and no longer of any force or effect.

3. Paragraph 1 of the Cooperative Agreement entitled “KEY DEFINITIONS” is amended at subparagraph (b) to read as follows:

“The term “**Buildings**” as referenced in the Cooperative Agreement, as amended, shall mean the EEB Buildings and the Interstate Building as described in the Recitals to this First Amendment, and as depicted on Exhibit A-1, the Site Plan, attached to this First Amendment. Unless otherwise specified, the provisions of the Cooperative Agreement, as amended, shall apply to both the EEB Buildings and the Interstate Building.”

4. Paragraph 1 of the Cooperative Agreement entitled “KEY DEFINITIONS” is amended at subparagraph (c) to read as follows:

“The term “**Plaza**” shall mean that area generally depicted on Exhibit A-1, the Site Plan, attached hereto. The Reservable Event Area extends from the concrete area abutting and surrounding the Interstate Building to the EEB Buildings and its outdoor trellis space, bounded by the walking paths between the two buildings.”

5. Paragraph 5 of the Cooperative Agreement entitled “IMPROVEMENTS TO BUILDINGS” is amended to add a subparagraph (a), entitled “Completed EEB Buildings”, and to add a subparagraph (b), entitled “Interstate Building”, to read as follows:

“(a) Completed EEB Buildings. The Parties acknowledge and agree that the City has heretofore performed certain design, construction and installation of improvements with respect to the EEB Buildings and the Park, including bringing certain utilities to the EEB Buildings (collectively, the “**City’s Work**”). As a condition of City’s obligations under this Cooperative Agreement, as amended, and the Art District’s rights and privileges under this Cooperative Agreement, as amended, with regard to the EEB Buildings, Art District completed construction and renovation of the EEB Buildings in substantial accordance with the plans and specifications previously submitted to and approved by the City and the budget mutually approved by the City and the Art District in writing, including fully funding the improvements and meeting all requirements of an Assignment Agreement, as executed on August 24, 2020 (the “**EEB Assignment Agreement**”).

(b) Interstate Building. As a condition of City’s obligations under this Cooperative Agreement, as amended, and the Art District’s rights and privileges under this Cooperative Agreement, as amended, with regard to the Interstate Building, Art District has agreed to complete construction and renovation of the Interstate Building in substantial accordance with the plans and specifications previously submitted to and approved by the City and the budget mutually approved

by the City and the Art District in writing, including fully funding the improvements and meeting all requirements of an additional Assignment Agreement, as executed November 7, 2022 (the “**Interstate Building Assignment Agreement**”). Consistent with Paragraph 5(c) of the Interstate Building Assignment Agreement, if Art District fails to meet the requirements under the Interstate Building Assignment Agreement or otherwise fails to complete the improvements subject to City’s reasonable approval and as contemplated in this Agreement, the City shall have no obligations to Art District under this Cooperative Agreement, as amended, as related to the Interstate Building.”

6. Paragraph 8 of the Cooperative Agreement entitled “**GENERAL MAINTENANCE AND REPAIR**”, at subparagraph (a), entitled “Art District Services”, is amended to read as follows:

“(a) Art District Services. Except as otherwise expressly provided and subject to the limitations set forth in this Agreement, as amended, and Exhibit A-1, Art District shall maintain the Buildings and the Facilities, Fixtures and the Plaza (but not the Park) in safe condition and good repair, including, without limitation, driveways, walkways, and landscape on the immediately adjacent grounds, in all public and non-public areas within the Buildings. Subject to the limitations set forth in this Agreement, Art District shall, at its own expense, maintain, repair, and replace all damaged, broken, or worn out Hardware & Equipment, as defined in Section 1(k). Art District must immediately report to the City’s Risk Management Office damage to the Buildings covered by City insurance. In the event that Art District performs Capital Improvements or makes any repairs to any items of the City’s Work, Art District shall provide sufficient advance notice to the City to allow the City to determine whether any warranties apply to the work, or decide the extent to which warranties may apply.”

7. Paragraph 8 of the Cooperative Agreement entitled “**GENERAL MAINTENANCE AND REPAIR**” is amended to add a subparagraph (d), entitled “Inspections”, to read as follows:

“(d) Inspections. Art District shall coordinate with DPR to identify a mutually agreed upon date each year for DPR to conduct a walk-through and inspection of the Facilities, Buildings, Fixtures, and Plaza.”

8. Paragraph 8 of the Cooperative Agreement entitled “**GENERAL MAINTENANCE AND REPAIR**” is amended to add a subparagraph (e), entitled “Preventative and Predictive Maintenance and Repair”, to read as follows:

“(e) Preventative and Predictive Maintenance and Repair. Art District shall conduct an annual preventative maintenance inspection of the Buildings, Facilities, Fixtures, and Plaza including but not limited to, inspection of the roof, fire alarms, electric, plumbing, backflow, and HVAC systems. All maintenance shall be performed in compliance with manufacturer specifications by licensed professionals when required or appropriate.. In addition, the Art District shall arrange, at its sole expense and as the Art District deems warranted, but not less than every five (5) years starting from the Effective Date of the First Amendment, to have qualified and licensed professionals inspect and recommend repairs or replacements to all the Facilities and Fixtures and provide a written report (“Inspector’s Report”) to the City within sixty (60) days of

each inspection. All findings of deficient repair, maintenance or replacement required in accordance with the Inspector's Report shall be completed by Art District within ninety (90) days of date of the Inspector's Report, unless otherwise mutually agreed upon by the City and the Art District."

9. Paragraph 8 of the Cooperative Agreement entitled "**GENERAL MAINTENANCE AND REPAIR**" is amended to add a subparagraph (f) to read as follows:

"(f) In addition to the foregoing, Art District shall be responsible for any repairs or replacements of any Capital Improvements that are damaged or broken by the willful or negligent actions of Art District, its owners, shareholders, members, officers, employees, volunteers, contractors, tenants, subtenants, invitees, suppliers, agents, and other third-parties, including the failure to properly monitor or supervise the aforesaid uses of the interior and exterior of the Facilities that result in such damage. Such repairs or replacements shall be performed and paid for by Art District within a reasonable time period specified in a written notice from the City unless otherwise mutually agreed upon by the City and the Art District."

10. Paragraph 11 of the Cooperative Agreement entitled "**GENERAL OPERATIONAL REQUIREMENTS**" at subparagraph (g), entitled "City Access", is amended to read as follows:

"(g) City Access. The Mayor, members of the City Council, the Executive Director, and other representatives of appropriate City departments shall, at all reasonable times and upon reasonable notice, have access to the Buildings for the purposes of visitation and inspection. DPR reserves the right to utilize the Building or Facilities, whether the EEB Buildings or the Interstate Building, or portions thereof of either Building, so long as such use does not interfere with Art District's planned, scheduled, contracted, or reserved use. DPR and Art District shall coordinate dates and times for such use by DPR."

11. Paragraph 12 of the Cooperative Agreement entitled "**SUBTENANCIES; CONCESSIONS; ART DISTRICT EVENTS AND FUNDRAISERS; PERMITTING**", at subparagraph (d)(i), entitled "Art District Events in the Park", is amended to read as follows:

"(i) Art District Events in the Park. Art District events held in any portion of the Park other than those held in the Art District Reservable Event Area shall require a permit issued by DPR to the Art District. Art District may request use of portions of the Park or the entire Park for Art District events subject to DPR permitting rules and policies, including the DPR Public Events Rules, Regulations and Policies; blackout dates established by the DPR Permitting Office; and priority use by other permittees. Art District shall have non-exclusive use of the Park as a member of the general public, including without limitation, bringing non-exclusive groups into the Park for public programs and activities. Art District shall be entitled to five (5) right-of-first-refusal dates each calendar year ("Permitted Dates") to permit the Park (or portions thereof) for its exclusive use for all or less than a full day use (within normal Park hours) in accordance with the following terms and conditions. Art District shall coordinate with DPR to identify a mutually agreed upon date each year, no later than the deadlines set forth by the DPR Permit Office, to provide written notice to reserve Art District's Permitted Dates for exclusive park use. Art District shall include in the request delivered to the Executive Director (as required herein) (i) its selected Permitted

Dates within the following calendar year, (ii) the locations within the Park for each event or activity, and (iii) an estimate of the number of people planned for each event or activity. Subject to permits or other Parks-approved uses issued prior to Parks' receipt of Art District's notice, Art District shall have exclusive use of the Park (or described portion thereof) during the Permitted Dates provided. The City shall not issue a permit for or otherwise authorize any other party to use the Park (or described portions thereof) during the Permitted Dates. In the event that Art District desires to change any of the Permitted Dates to alternative dates, it shall send a written request in the same manner as the notice for the initial request in this paragraph requesting the change, and Art District and DPR will work together to provide for Art District's use of the requested space on the alternative dates, subject to prior permitting by the public. Provided the requested space is available on the requested alternative dates, Art District shall have exclusive use of the Park (or applicable portion thereof) on such alternative or additional dates. If Art District desires to use the Park (or any portion thereof) for any exclusive event or activity outside of the Permitted Dates, Art District shall send prior notification to DPR, obtain approval by DPR (not to be unreasonably withheld, conditioned, or delayed) and, at the discretion of DPR, shall obtain a permit issued by DPR."

12. Paragraph 12 of the Cooperative Agreement entitled "**SUBTENANCIES; CONCESSIONS; ART DISTRICT EVENTS AND FUNDRAISERS; PERMITTING**", at subparagraph (d)(ii), entitled "Art District Events in the Plaza", is amended to read as follows:

"(ii) Art District Events in the Plaza. Art District events held in or on the Plaza shall not require a DPR permit. Use of the Plaza by Art District shall be subject to the requirements of this Agreement. Art District shall at all times during an Art District event in the Plaza maintain public access to the Park. Art District is entitled to up to ten (10) private or closed events in the Plaza per calendar year, provided Art District may request additional private or closed events in the Plaza subject to DPR approval, which approval shall not be unreasonably withheld. DPR shall be entitled to ten (10) free tickets to each Art District event in the Plaza. After each Art District event in the Plaza, Art District shall at its own cost return the Plaza to its original condition consistent with or exceeding DPR standards, including power washing and performance of any repair of damage or replacement of facilities. Art District shall not schedule private or closed events, or authorize any other third-party private use or closed use, during DPR-permitted or other DPR-approved uses of the Park issued prior to DPR's receipt of Art District's schedule of private events."

13. Paragraph 12 of the Cooperative Agreement entitled "**SUBTENANCIES; CONCESSIONS; ART DISTRICT EVENTS AND FUNDRAISERS; PERMITTING**" is amended at subparagraph (f), entitled "Third-Party Permitting", to read as follows:

"(f) Third-Party Event Permitting. Art District shall have no authority to issue permits to third-parties for events or other use of the Park. Art District shall have the right to allow third-parties to reserve either of the Buildings or the Plaza, or portions thereof, and charge reasonable fees, for short-term public and private events subject to the following terms and conditions:

(i) The proposed event is consistent, in use and manner, with other events permitted by the City in its other parks and park facilities;

(ii) The proposed event is limited in scale and activities to that which is appropriate for the Buildings, Plaza or the immediately adjacent grounds in consideration of the Buildings', Plaza's and the immediately adjacent ground's size and character;

(iii) An event involving the sale or service of alcohol beverages or requiring the payment of admission charge or other consideration to the organizer or sponsor of the event shall not be allowed unless expressly authorized by the City;

(iv) General liability and other insurance appropriate for the proposed event shall be required of the third-party user as a condition of the reservation, and evidence of that insurance, including liquor liability insurance if alcohol beverages are served or sold, must be provided to Art District prior to the event;

(v) Any fees and charges specified by City ordinance or adopted by Art District and approved by the Executive Director, and as approved by City Council, including but not limited to the Facilities Development Admission Tax, or any charges required by the Executive Director, must be assessed and collected;

(vi) Art District may collect and retain separate charges set by Art District for the use and benefit of the Buildings and Plaza; and

(vii) Art District may issue no more than eight (8) reservations to third-parties per calendar year for events in the Plaza.

(viii) Art District shall develop and provide to DPR policies and procedures for guiding equitable balance of public and private third-party events held on City property and addressing community benefits as required under Paragraph 9 of the Cooperative Agreement, as amended."

14. Paragraph 12 of the Cooperative Agreement entitled "**SUBTENANCIES; CONCESSIONS; ART DISTRICT EVENTS AND FUNDRAISERS; PERMITTING**" is amended to add a subparagraph (h), entitled "Maintenance and Repair", to read as follows:

"(h) Maintenance and Repair. Art District shall establish a process to identify, assess, and document vendor or patron damage to the Facilities, Buildings, Fixtures, Plaza, and Park for any event held in accordance with this Section 12. After each Art District event or Art District-reserved third-party event in the Plaza or Park, Art District shall at its own cost, return the Plaza and the Park to its original condition consistent with or exceeding DPR maintenance standards, including power washing, debris and trash removal, and performance of any repair of damage or replacement of facilities."

15. Paragraph 20 of the Cooperative Agreement entitled "**REPORTS; AUDITS AND BUDGETS**", at subparagraph (a), is amended to read as follows:

"(a) Art District shall, on an annual basis no later than April 1, provide to the Executive Director a comprehensive written report of its activities associated with the Buildings, Plaza and Park from the preceding year (the "Annual Report"). The Annual Report shall contain the

following:

(i) A financial report prepared by an independent Certified Public Accountant of all prior year receipts and expenditures of public and private funds associated with the Buildings, including but not limited to: all revenue and funds received from Subtenants; all fees, rents or other charges for access to or use of the Buildings and Plaza from events, participation in programs or other activities; concession receipts; and Gifts, Sponsorships, and Grants;

(ii) Changes, proposed changes, or a statement of no changes, to the Personnel Policy (Section 6);

(iii) Schedule of proposed or planned programs for the upcoming year, a statement of any updates to programs, or a statement of no updates;

(iv) List and description of assets (Hardware, Equipment, and Capital Improvements) acquired or transferred to the City in the preceding year, or assets intended to be transferred in the upcoming year, or a statement of no transfer or statement of no intent to transfer;

(v) A copy of Art District's annual preventative and predictive maintenance report (Section 8);

(vi) Current hours and days of operation (Section 11);

(vii) Amendments or modifications to governance and operational documents, or a statement of no amendments or modifications (Section 11(e));

(viii) Proposed changes in schedule of fees, charges or rental rates, or a statement of no proposed changes (Section 12);

(ix) Schedule of proposed or planned public events for the upcoming year, or a statement of no proposed or planned events (Section 12);

(ix) Schedule of proposed or planned private or closed events for the upcoming year, or a statement of no proposed or planned exclusive events (Section 12);

(xi) Descriptions of all Art District's programs, partnerships, events and activities conducted within the Buildings, Plaza, Reservable Event Area, and/or other portions of the Park, including but not limited to, outreach efforts, engagement and participation details, and other pertinent information and outcomes;

(xii) Competitive selection procedures for services or concessionaires, or amendments, or a statement of no amendments (Section 8(c));

(xiii) List and description of completed construction and maintenance projects over \$7,500, or a statement of no projects or no completed projects;

(xiv) Documents resulting from any Assignments made in accordance with Section 25(c), or a statement of no Assignments;

(xv) Gifts and Sponsorships Policy if applicable, modifications to Gifts and Sponsorships Policy, or a statement of no policy developed or modifications (Section 13(a));

(xvi) A copy of Art District's institutional report (if any).

16. Except as amended herein, the Cooperative Agreement is ratified and affirmed by the Parties and shall remain in full force and effect.

17. Electronic Signatures and Electronic Records: The Parties consent to the use of electronic signatures by the City. The Amendment may be signed electronically by the City in the manner specified by the City. The parties agree not to deny the legal effect or enforceability of the Amendment or the Agreement solely because it is in electronic form or because an electronic record was used in its formation. The parties agree not to object to the admissibility of the Amendment or the Agreement in the form of an electronic record, or a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the ground that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

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[SIGNATURE PAGES TO FOLLOW]

Contract Control Number: PARKS-202056822-01
Contractor Name: RINO ART DISTRICT

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:

Attorney for the City and County of Denver


By:

By:

By:

Contract Control Number:
Contractor Name:

PARKS-202056822-01
RINO ART DISTRICT

DocuSigned by:

By: 12BEE933D1B94F6...

Name: Charity von Guinness
(please print)

Title: Executive Director
(please print)

ATTEST: [if required]

By: _____

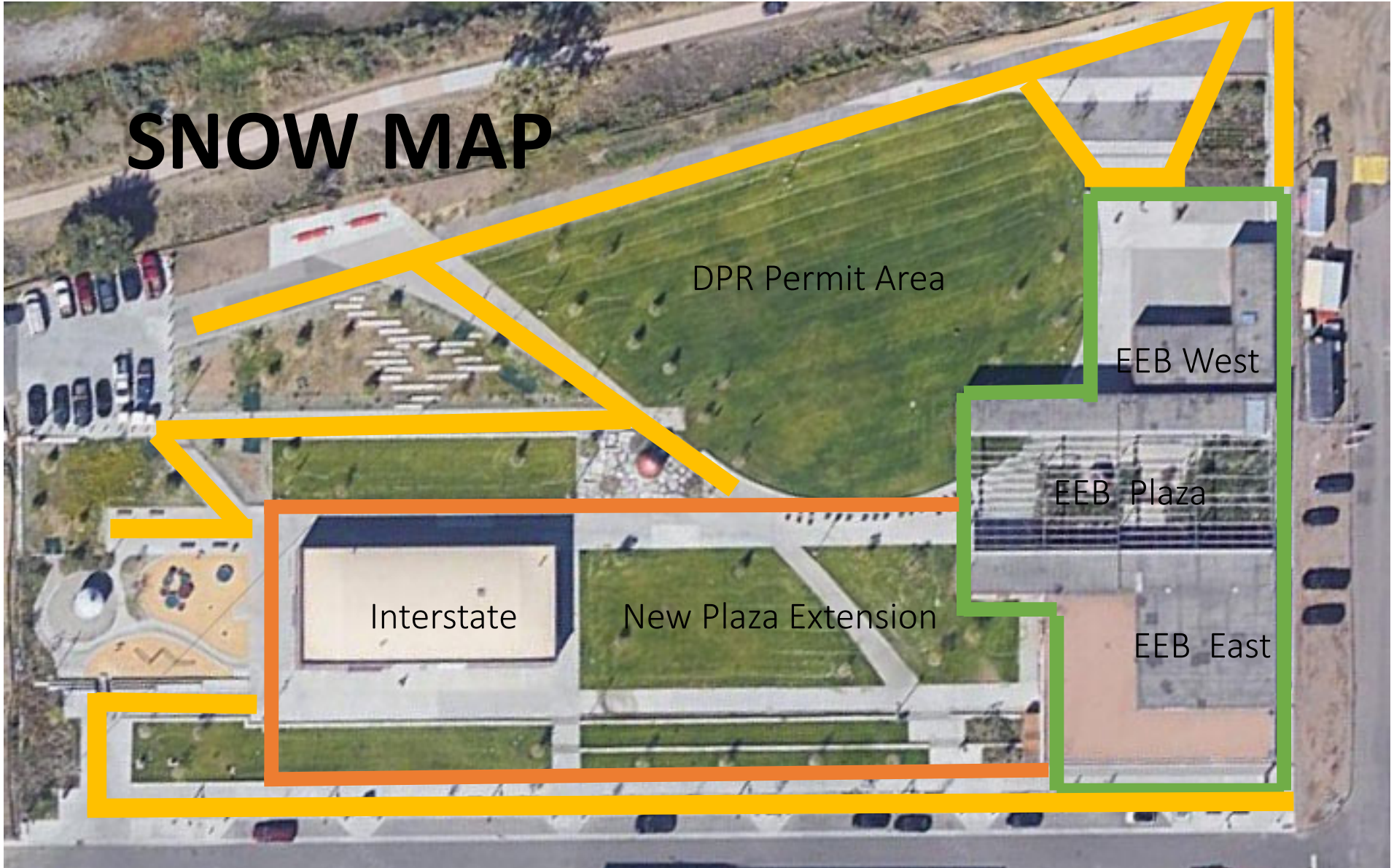
Name: _____
(please print)

Title: _____
(please print)

Exhibit A-1



SNOW MAP



DPR Permit Area

EEB West

EEB Plaza

Interstate

New Plaza Extension

EEB East