

06-166-A

FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT

THIS FIRST AMENDMENT TO INTERGOVERNMENTAL AGREEMENT ("First Amendment") is made and entered into as of the Effective Date, by and among the City and County of Denver, a Colorado home rule municipal corporation ("Denver"), and the City of Aurora, a Colorado home rule municipal corporation ("Aurora"), and Park Creek Metropolitan District ("District"), referred to herein collectively as the "Parties".

RECITALS

WHEREAS, the Parties entered into an Intergovernmental Agreement ("IGA"), dated April 4, 2006, regarding development of certain real property in Denver and Aurora referred to in the IGA as the "Stapleton Site"; and

WHEREAS, due to changed circumstances, the Parties desire to amend certain terms of the IGA relating to street connections, as more particularly set forth below; and

WHEREAS, paragraph 12 of the IGA states that no amendment shall have any force or effect unless embodied in a written amendatory or other agreement executed by the Parties in the same manner as the IGA was originally approved; and

WHEREAS, Denver and Aurora are authorized to enter into this Amendment to the IGA pursuant to § 29-20-105, C.R.S., their respective home rule Charters, Colorado Constitution, Article XX, and Colorado Constitution, Article XIV, Section 18.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, Denver, Aurora, and the District agree as follows:

1. Paragraph 1.B.(i)(a) of the IGA is amended in its entirety to read as follows:

(i) Dayton/Emporia, Fulton, lola, and Kingston Street Connections. The District shall construct street connections between 25th and 26th Avenues to Dayton/Emporia, Fulton, lola, and Kingston Streets in Aurora as shown on Exhibit B. Connection cross sections shall be consistent with the approved Stapleton Aurora General Development Plan, as may be amended or modified from time to time. Such Connections shall be constructed and paid for on the following terms:

(a) Construction of the Fulton and lola Streets Connections shall be initiated in 2012 subject to receipt of permits for construction and acquisition of any necessary right-of-way. The lola Street Connection shall be completed 20 weeks after receipt of permits for construction

and acquisition of any necessary right-of-way but no later than September 1, 2013. The Fulton Street Connection shall be completed 24 weeks after receipt of permits for construction and acquisition of any necessary right-of-way but no later than September 1, 2013. The Dayton/Emporia Connection shall be completed 19 weeks after receipt of permits for construction and acquisition of any necessary right-of-way but no later than June 1, 2017. The construction of the Kingston Street Connection shall be completed 19 weeks after receipt of permits for construction and acquisition of any necessary right-of-way but no later than June 1, 2014. The Parties acknowledge the dates for completion of the Connections may be modified by mutual agreement of the Parties without the need to amend this First Amendment or the IGA. Such modification may be evidenced by a letter signed by the Denver Manager of Public Works, the Aurora City Manager, and the District's President. The connections are anticipated to benefit overall connectivity between Denver and Aurora and may occur prior to other development in Aurora. As such, Aurora and Denver agree to facilitate the plan approval process to allow roadway and utility infrastructure to be installed in the corridor and right-of-way dedication without adjacent Aurora development.

2. Paragraph 1 B.(i)(c)(1) and (2) of the IGA is amended in its entirety to read as follows:

- (1) (c) The costs for construction of the Iola, Fulton, Dayton/Emporia, and Kingston Street Connections shall be paid as set forth below. Initial Acceptance as used herein means that Initial Acceptance issued by Aurora when the following items are completed: (i) all major work elements have been accepted by the Aurora Public Improvement Inspector; and (ii) Compaction and Materials Testing Reports, in compliance with the applicable specifications and the requirements of Section 32.00, Materials Testing, "Roadway Design & Construction Specifications" manual, latest edition, have been delivered and approved by Aurora's Material Testing Laboratory. Subject to appropriation as provided herein, Denver shall pay \$300,000 for each of such four Connections. Each such \$300,000 amount shall be paid by Denver to the District, upon receipt of an invoice from the District, as follows:
 - a. \$300,000 shall be reimbursed within thirty (30) days after Initial Acceptance of the Iola Connection by Aurora, but no earlier than January 13, 2013.
 - b. \$300,000 shall be reimbursed within thirty (30) days after Initial Acceptance of the Fulton Connection by Aurora, but no earlier than January 13, 2013.

- c. \$300,000 shall be reimbursed within thirty (30) days after Initial Acceptance of the Dayton/Emporia Connection by Aurora but no earlier than January 13, 2015.
- d. \$300,000 shall be reimbursed within thirty (30) days after Initial Acceptance of the Kingston Connection by Aurora but no earlier than January 13, 2014.

Denver's obligation to pay the District is conditioned upon the completion of the Connections as set forth in Paragraph 1.B.(i)(a) and (b) above.

- (2) Subject to appropriation as provided herein, Aurora shall pay \$200,000 for each of such four Connections. Each such \$200,000 amount shall be paid by Aurora to the District, upon receipt of an invoice from the District, as follows:
 - a. \$400,000 shall be reimbursed within thirty (30) days after Initial Acceptance of both the lola and Fulton Connections by Aurora.
 - b. \$200,000 shall be reimbursed within thirty (30) days after Initial Acceptance of the Dayton/Emporia Connection by Aurora.
 - c. \$200,000 shall be reimbursed within thirty (30) days after Initial Acceptance of the Kingston Connection by Aurora.
 Aurora's obligation to pay the District is conditioned upon the completion of the Connections as set forth in Paragraph 1.B.(i)(a) and (b) above.

3. Paragraph 1 C is hereby amended in its entirety to read as follows:

C. MLK Extension. The District shall construct an extension of Martin Luther King Boulevard from Denver (at approximately lola Street) into Aurora ("MLK Extension") to align with Fitzsimons Parkway at Peoria Street, as shown in the cross section on Exhibit C, as revised by this First Amendment and attached hereto as Exhibit C and incorporated herein, and as shown in the approved Martin Luther King, Jr. Boulevard Extension Environmental Assessment, dated May 2011 and signed July 2011 ("Environmental Assessment"). If the cross sections set forth in the Environmental Assessment are modified there under, Exhibit C shall automatically be modified to reflect such Environmental Assessment modifications upon the written approval of Denver's Manager of Public Works and Aurora's City Engineer.

4. Paragraph 1 H is hereby amended in its entirety to read as follows:

H. Existing Storm Drain Pipe. The existing 72-inch storm drain pipe will remain in its current location and only modified as provided for in Paragraph 2F herein. The Kingston Street alignment north of the 25th Street alignment to its connection in MLK, will parallel the current storm drain pipe such that the pipe is within the future right-of-way as shown on Exhibit B.

5. Paragraph 2F is hereby amended in its entirety to read as follows:

F. Storm Drain Pipe Modifications.

- (i) Storm Drain Pipe Modifications shall be designed and constructed in accordance with plans approved by Aurora and Denver.
- (ii) Construction and Inspection
 - a. The District shall manage and administer all contractor bidding and selection and provide for construction administration for the Storm Drain Pipe Modifications. The District shall, subject to the limitations set forth in Section 3, construct the Storm Drain Pipe Modifications consistent with the approved plans, the MFDA and any IFDA.
 - b. Aurora shall inspect the portion of the Storm Drain Pipe Modifications within Aurora in a timely manner.
 - c. Denver shall inspect the portion of the Storm Drain Pipe Modifications within Denver in a timely manner in accordance with the MFDA and any IFDA.
- (iii) Acceptance and Conveyance of Existing and Modified Storm Drain Pipe
 - a. Existing Storm Drain Pipe – The existing Storm Drain Pipe is owned by Aurora. The portions of the existing Storm Drain Pipe that are located in Denver shall be conveyed by Aurora to Denver within thirty (30) days after Denver inspects and accepts the Existing Storm Drainage Pipe in accordance with Denver's standards procedures, the MFDA and any IFDA as if the Existing Storm Drain Pipe was newly constructed.
 - b. Storm Drain Pipe Modification – The District shall provide for the conveyance of the portion of the Storm Drain Pipe Modifications in Denver to Denver in accordance with the MFDA and any IFDA. The District shall provide for the conveyance of the portion of the Storm Drain Pipe Modifications in Aurora to Aurora in accordance with applicable Aurora standards and requirements.

6. The second sentence of Paragraph 4B(i) (relating to the Storm Drain Pipe located in Denver) is hereby amended in its entirety to read as follows:

After the portion of the Existing Storm Drain Pipe and Modifications located in Denver is accepted by Denver, Denver shall have the responsibility for operating, maintaining, repairing and replacing that portion of the Existing Storm Drain Pipe and Modifications.

The remainder of Paragraph 4B(i) shall remain in full force and effect.

7. Paragraph 12 is hereby amended by adding the following to the end of such Paragraph 12:

Notwithstanding the foregoing, road cross-sections and other technical standards and specifications may be modified without amending this Agreement upon the written approval of the Denver Manager of Public Works, the Aurora City Manager and the District's President.

8. The effective date of this First Amendment shall be the later of February 23, 2012 or the date all approvals from the Parties have been received and the document fully executed by all parties ("Effective Date").

9. This First Amendment may be executed in counterparts, each of which shall be deemed to be an original, but of all which shall together constitute one of the same document. Facsimile signatures shall be accepted as originals. The Parties consent to the use of electronic signatures by Denver. The First Amendment and any other documents requiring a signature may be signed electronically by Denver in the manner specified by Denver. The Parties agree not to deny the legal effect or enforceability of the First Amendment 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 First Amendment in the form of an electronic record, a paper copy of an electronic document, or a paper copy of a document bearing an electronic signature, on the grounds that it is an electronic record or electronic signature or that it is not in its original form or is not an original.

10. Except as set forth herein, all terms and provisions of the IGA remain the same and in full force and effect. In the event this First Amendment conflicts, varies from, or modifies the terms and provisions of the IGA, then the terms and provisions of the First Amendment shall control and govern the rights and obligations of the Parties hereto.

IN WITNESS WHEREOF, the parties hereto have caused this First Amendment to be executed as of the Effective Date.

ATTEST:

By: _____
Debra Johnson, Clerk and Recorder,
Ex-Officio Clerk of the
City and County of Denver

APPROVED AS TO FORM:
Douglas J. Friednash, Attorney
for the City and County of Denver

By: _____
Assistant City Attorney

CITY AND COUNTY OF DENVER

By: _____
MAYOR

REGISTERED AND COUNTERSIGNED:

By: _____
Manager of Finance

By: _____
Auditor

CITY OF AURORA

By _____
Stephen D. Hogan, Mayor

ATTEST:

Janice Napper, City Clerk

APPROVED AS TO FORM:

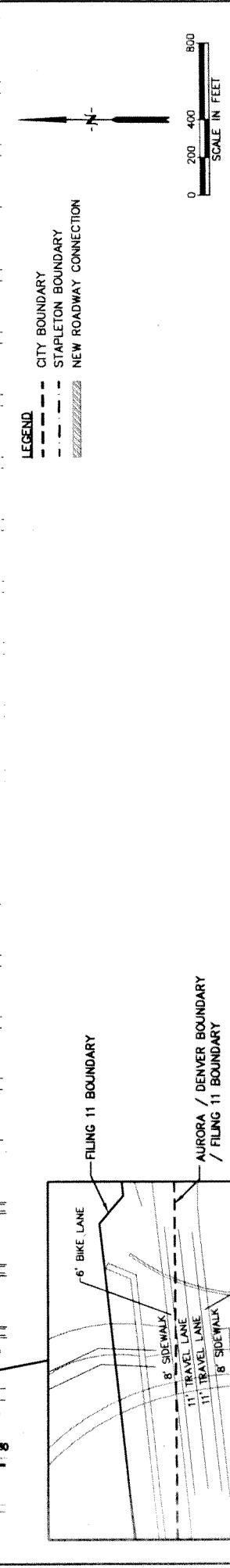
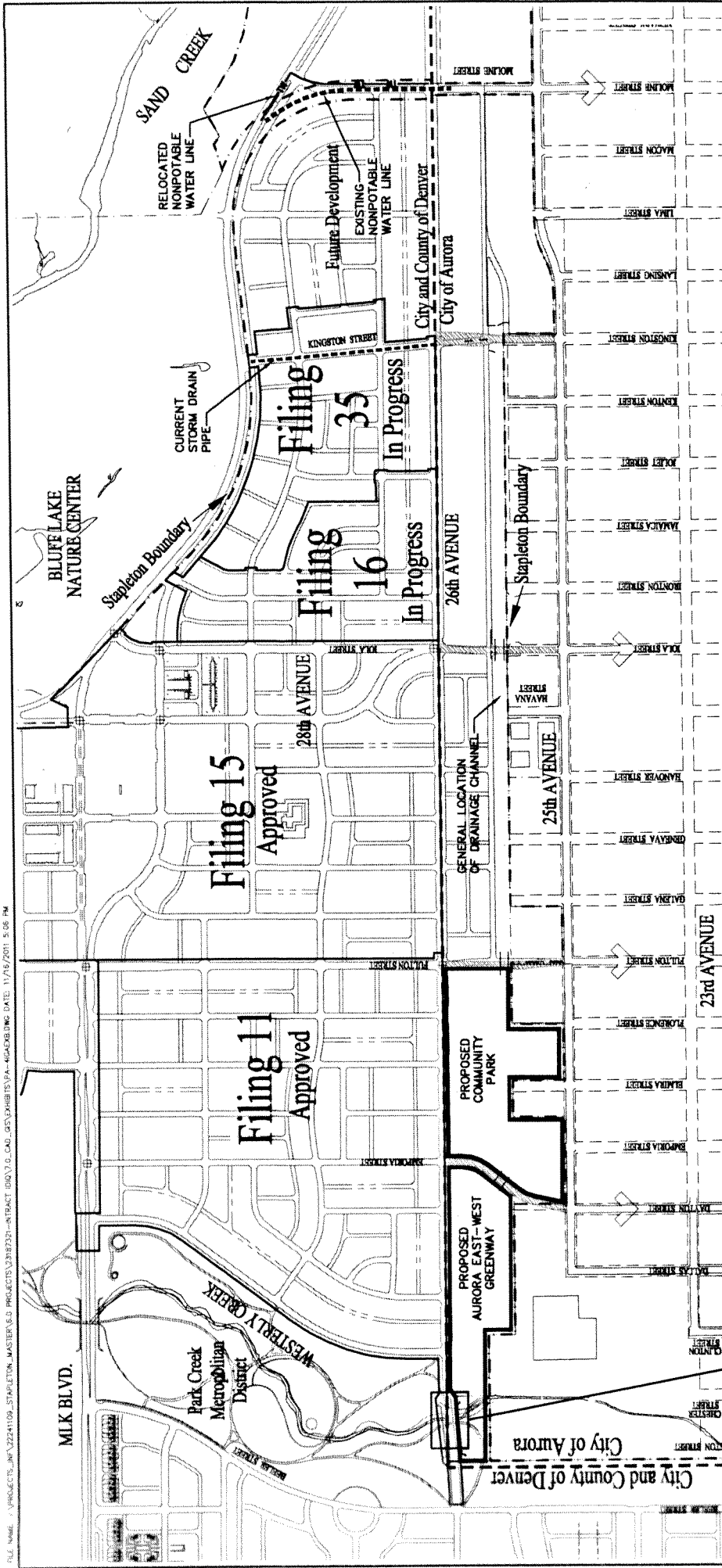
Aurora City Attorney

PARK CREEK METROPOLITAN DISTRICT

By: King H. Harris
Name: King H. Harris
Title: President

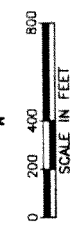
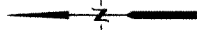
Exhibit B (Revised 12/7/11)

FILE NAME: \\PROJECTS\INF\2241101\STAPLETON_MASTER\6.D\PROJECTS\2187323-TRACT\000\7.D_CAD\05\DWG\1515.PLA - WSPLOTLING DATE: 11/16/2011 5:06 PM



LEGEND

- - - - CITY BOUNDARY
- - - - STAPLETON BOUNDARY
- ////// NEW ROADWAY CONNECTION



FORESTCITY STAPLETON
 1751 East 28th Avenue, Suite 301 Denver, CO 80238

STAPLETON

GEOGRAPHIC AREA OF AGREEMENT
 STAPLETON PROPERTY WITHIN AURORA

EXB

STAPLETON

URS
 14630 E. 12TH AVE
 DENVER, CO 80231
 TEL 303-740-3600 FAX 303-744-3844

DESIGNED BY: ZGL
 DRAWN BY: ZGL
 CHECKED BY: YETI
 DATE ISSUED: NOV., 2011
 SCALE: HORIZ: 1"=300'
 VERT:

Exhibit C (Revised 12/7/11)

Exhibit C MLK Extension Cross Section

MLK JR. BLVD EXTENSION TYPICAL SECTION
(LOOKING EAST, IOLA STREET TO PEORIA STREET)

