

**INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE CITY OF AURORA,
ARAPAHOE COUNTY
AND
THE SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY
REGARDING GUN CLUB ROAD IMPROVEMENTS**

THIS INTERGOVERNMENTAL AGREEMENT (the “Agreement”) is made and entered into this _____ day of _____ 2019 (the “Effective Date”), by and between the CITY OF AURORA, a Colorado home rule municipal corporation (the “City”), ARAPAHOE COUNTY, a body corporate and political subdivision of the State of Colorado (the “County”), and the SOUTH AURORA REGIONAL IMPROVEMENT AUTHORITY, a quasi-municipal corporation and political subdivision of the State of Colorado (“SARIA”) (the City, County and SARIA 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, the Parties desire to cooperatively participate in the funding and completion of the expansion of Gun Club Road from Quincy Avenue to Aurora Parkway in the City of Aurora and Arapahoe County (as used herein, the “Gun Club Road Improvements”) as further set forth herein; and

WHEREAS, in order to facilitate the timely completion of the Gun Club Road Improvements, the County and SARIA are willing to fund, and the City is willing to undertake, the initial scoping, preliminary design and other initial components of the Gun Club Road Improvements, including but not limited to providing for the identification and relocation of some existing utilities (as used herein, the “Project”) as further set forth herein; and

WHEREAS, the County and the City previously entered into a Memorandum of Understanding whereby the County and the City generally agreed to cooperatively and collaboratively work to improve Gun Club Road; and

WHEREAS, SARIA was established, in part, to support the planning, designing, construction, installation, acquisition, relocation, redevelopment and financing of regional

improvement projects to benefit the City of Aurora and SARIA's member districts, their constituents, and the public; and

WHEREAS, on June 15, 2018, SARIA adopted the South Aurora Regional Improvement Authority Master Plan Number Two (the "Master Plan"), pursuant to which Master Plan SARIA is authorized to contribute funding to support various regional improvements within the City of Aurora; and

WHEREAS, consistent with the Master Plan, SARIA has identified the Gun Club Road Improvements as a top priority regional improvement and has authorized funding to support the Project as further set forth in the Master Plan and herein; and

WHEREAS, the County has identified the Gun Club Road Improvements as a top priority regional improvement and has authorized funding to support the Project as further set forth herein; and

WHEREAS, the Parties and their respective residents, constituents, taxpayers, and customers will jointly benefit from the mitigation of traffic congestion in the Project corridor and the greater region; and

WHEREAS, the Parties desire to enter into this Agreement in order to set forth their mutual understanding and agreement regarding completion of the Project.

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 as though fully set forth herein.

2. PROJECT IMPLEMENTATION.

A. The Project. The "Project," as defined and used herein, shall be the initial scoping, preliminary design and other initial components of the Gun Club Road Improvements, including but not limited to providing for the identification and relocation of some existing utilities, necessary to facilitate the final design and construction of the Gun Club Road Improvements as generally described and depicted in the Project overview attached hereto as Exhibit A and incorporated by reference herein; the Project does not include the final design or actual construction of the Gun Club Road Improvements except as expressly set forth herein.

B. Project Implementation and Funding. The Parties understand and agree that the City, in coordination with the County, SARIA and any and all other applicable entities, as necessary, shall be primarily responsible for facilitating, overseeing, and completing the Project; provided, the City and County shall in good faith meet and confer as frequently as is reasonably necessary throughout the implementation of the Project in order to cooperatively and collaboratively complete the Project and to plan for the final completion of the Gun Club Road Improvements. The County's and SARIA's financial contributions toward the costs of the Project will be funded as provided in Section 3 of this Agreement.

C. Completion of Gun Club Road Improvements. The Project, as defined herein, does not include the final completion or construction of the Gun Club Road Improvements, except for utility relocation and other preliminary improvements described in Exhibit A, and no portion of the County Contribution (defined herein) or the SARIA Contribution (defined herein) shall be used for such construction unless otherwise agreed by the Parties in writing. The Parties have discussed and it is anticipated that, upon or near completion of the Project, the Parties will, by amendment to this Agreement or by a separate agreement, establish mutually agreeable terms upon which the Parties will cooperatively fund and complete the construction of the Gun Club Road Improvements; provided, in the event property adjacent to or near the Gun Club Road Improvements is annexed into the City subsequent to the effective date of this Agreement, the Parties agree they will take into consideration such annexations in determining the responsibilities of the Parties and any relevant private property owners for the final completion of the Gun Club Road Improvements. However, nothing in this Agreement in any way obligates the Parties to contribute to or complete the Gun Club Road Improvements beyond the extent of the Project as described herein.

D. Anticipated Completion of Project. The City will use reasonable efforts to complete the Project by December 31, 2021. No failure by the City to complete the Project by December 31, 2021, shall constitute a breach of this Agreement so long as the City pursues completion with reasonable efforts and due diligence.

E. Communication. The City shall keep accurate records of the progress of the Project and shall provide status reports to the County and SARIA, or their designees, on a regular basis (at a minimum, quarterly), including progress updates, notice of any material problems related to the Project, and a record of expenses and payments made to any contractor(s). Said status reports shall include updates to the Project Costs (defined herein) expended and the remaining costs projected to be expended through Project completion, and shall note any variances from the estimated Project Costs as well as any adjustments to the time schedule for Project completion.

3. CONTRIBUTIONS TO PROJECT COSTS.

A. General. The County and SARIA agree to fund the total actual costs of the Project as provided in this Section 3 (the "Project Costs"). The total Project Costs are currently estimated to be approximately Four Million Six Hundred Thousand Dollars

(\$4,600,000) (the “Estimated Project Costs”); the total costs to complete the full, final Gun Club Road Improvements (including the Project Costs) are currently estimated to be approximately Twelve Million Five Hundred Thousand Dollars (\$12,500,000).

B. Allocated Shares of Estimated Project Costs. As further set forth herein, the Parties understand and agree that the total costs to complete the Project (the Project Costs) will be funded in the following allocations detailed below:

Entity	Share of Estimated Project Costs
SARIA	\$2,300,000
County	\$2,300,000
TOTAL	\$4,600,000

C. County Contribution. The County hereby agrees to contribute to the City the amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) for the express limited purpose of funding the Project Costs (the “County Contribution”). The County Contribution will be funded by the County as follows:

(i) Within 30 days of the Effective Date, the County shall transfer to the City Five Hundred Thousand Dollars (\$500,000).

(ii) On or before January 31, 2021, the County shall transfer to the City the remainder of the County Contribution, said amount being One Million Eight Hundred Thousand Dollars (\$1,800,000); provided, the Parties understand and agree that the City and County may, subsequent to and apart from this Agreement, enter into a separate intergovernmental agreement pursuant to which the City will advance some or all of the \$1,800,000 remainder of the County Contribution on the County’s behalf.

(iii) The foregoing transfers may be made in any manner mutually agreeable to the County and the City.

D. SARIA Contribution. SARIA hereby agrees to contribute to the City the amount not to exceed Two Million Three Hundred Thousand Dollars (\$2,300,000) for the express limited purpose of funding the Project Costs (the “SARIA Contribution”). SARIA will transfer the SARIA Contribution to the City within 30 days of the Effective Date in a manner mutually agreeable to SARIA and the City.

E. Use of Contribution Funds and Accounting.

(i) The City expressly agrees the County Contribution and SARIA Contribution funds shall only be used for the limited purpose of funding actual Project Costs. The City shall maintain or cause to be maintained full and complete records of actual Project Costs incurred and funds committed and expended by the City for actual

Project Costs in accordance with generally accepted accounting principles. The County and SARIA shall have the right to audit the City's financial records related to the Project during the Project and up to three (3) years after completion of the Project.

(ii) The Parties agree the cost of City staff time directly related to and necessary for the implementation of the Project may be considered and included in Project Costs, and such costs will be specifically documented in the City's Project records, but such costs will only be funded from the SARIA Contribution and will not be funded from the County Contribution. General administrative and overhead costs of the City not directly related to the Project shall not be considered and included in Project Costs.

F. Project Cost Overruns and Underruns.

(i) If the City becomes aware that Project Costs may exceed the Project Cost Estimate, the City will provide the County and SARIA with written notice of the same as soon as is reasonably possible.

(ii) In the event the Project Costs do in fact exceed the Project Cost Estimate, the County and SARIA shall in good faith endeavor to appropriate additional funds in excess of their respective contributions in order to fund the total amount of the Project Costs above the Project Cost Estimate; provided, however, the Parties expressly understand and agree that nothing in this Agreement in any way obligates any of the Parties to budget, appropriate, transfer, pay or otherwise contribute to the Project an amount in excess of the contributions set forth herein.

(iii) In the event the actual Project Costs are in fact less than the Project Cost Estimate upon final completion of the Project, SARIA and the County will each be entitled to one-half (1/2) of the difference between the total actual Project Costs and the Project Cost Estimate (the "Project Savings"), and, within 30 days of final completion of the Project, the City shall transfer to SARIA and the County their respective shares of the Project Savings, as applicable; provided, however, if SARIA or the County has not yet contributed the full SARIA Contribution or County Contribution, respectively, such Party's share of the Project Savings shall be first applied to pay in full the remaining SARIA Contribution or remaining County Contribution amounts due to the Authority, as applicable, and only if there are additional Project Savings amounts available after payment in full to the City of the SARIA Contribution and the County Contribution shall SARIA or the County, respectively, be entitled to receive its share of the Project Savings, or a portion thereof, if any. Notwithstanding the foregoing, upon mutual written agreement of the Parties, any Project Savings may be withheld by the City to be applied to costs associated with completing the Gun Club Road Improvements beyond the preliminary scope of the Project.

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 County Contribution and the SARIA Contribution, are subject to annual appropriations of the respective Parties and do not establish debts or other multi-fiscal year obligations thereof.

5. COMPLETION OF IMPROVEMENTS; OWNERSHIP AND MAINTENANCE. Except as set forth herein, the Project does not include the completion or construction of the Gun Club Road Improvements. All improvements, facilities and appurtenances associated with the Project, if any, will be owned, operated and maintained by the City, the County or by a third party as mutually agreed by the Parties in a separate agreement to be entered into at a later date. Nothing herein shall be construed as granting to any entity other than the City, the County and SARIA any rights, property or otherwise, in or to the Gun Club Road Improvements or the Project, or any improvements, facilities and appurtenances associated with the same. Any and all designs, plans, drawings or other documents prepared by or for the City to complete the Project pursuant to this Agreement, including but not limited to those deliverables set forth in Exhibit A, shall be considered the joint property of the Parties and shall be provided to the County and SARIA.

6. LIMITED LIABILITY. Except for the County Contribution, the SARIA Contribution, and as set forth herein, the Parties understand and agree that neither the County nor SARIA shall have any duty, obligation, responsibility or liability related to the planning, design, construction, completion, ownership, operation or maintenance of the Gun Club Road Improvements or the Project pursuant to this Agreement. Neither the County nor SARIA shall be liable for any claims, demands, losses, damages, expenses, injuries, or liabilities arising from the death or injury of any person or persons, including any claims of the City or other funding entities, or from any damage to or destruction of property caused by or in connection with City's activities performed pursuant to this Agreement to complete the Project, or any negligent act or omission of the City, its officers, employees, or agents, or any other funding entities or the Project contractor(s) related thereto.

7. INSURANCE. The City shall require that any and all contractor(s) performing work for the Project obtain and maintain insurance in customary industry amounts satisfactory to the City. Further, the City shall require that such contractor's insurance coverage(s) name the County and SARIA as additional insureds with respect to the Project work.

8. BREACH AND ENFORCEMENT. It is specifically understood that, by executing this Agreement, subject to Section 4 hereof, 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.

9. TERM OF AGREEMENT AND TERMINATION. This Agreement shall be effective as of the Effective Date identified above and shall terminate upon the earlier of: (1) final payment of the County Contribution and the SARIA Contribution to the City, completion and close out of the Project including all applicable warranty periods, final accounting of the Project Costs being provided by the City to the County and SARIA, and payment or permitted withholding of any Project Savings as provided in Section 3(F)(iii) hereof; or (2) termination in the event of default pursuant to the below provisions.

Each Party shall have the right to terminate this Agreement after sixty (60) days written notice to the other Parties in the event of a material default which is not cured; provided, termination shall not be effective if reasonable actions to cure the breach have been taken by the defaulting party before the effective date of the termination, and such actions are pursued diligently to a successful completion within sixty (60) days from inception of the actions. If such actions are not successful within said period of time, any non-defaulting party shall have the right to terminate this Agreement upon written notice to the other parties.

In the event of termination for any reason, the City shall settle all accounts related to the Project and, subject to Section 3(F)(iii) hereof, remit to the County and SARIA any portion of the County Contribution and the SARIA Contribution, respectively, that has not been applied to Project Costs as well as the County's and SARIA's pro rata shares of any monies recovered from or refunded by any Project contractor, as applicable.

10. INDEMNIFICATION. To the extent permitted by law, the City shall indemnify, defend, save, and hold harmless the County and SARIA, their officers, employees, and agents, against any and all claims, damages, liability, and court awards, including all costs, expenses, and attorney fees incurred as a result of any act or omission of the City or its employees, agents, subcontractors, or assignees related to this Agreement or the planning, design, construction, completion, ownership, operation or maintenance of the Project.

11. MISCELLANEOUS.

A. Assignment. None of the Parties hereto may assign this Agreement or parts hereof or its rights hereunder without the express written consent of all of the other Parties. 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 County:

Director, Public Works & Development
Arapahoe County Lima Plaza
6924 S. Lima Street
Centennial, CO 80112

With Copy to:

County Attorney
County Administration Building
5334 S. Prince Street
Littleton, CO 80120

If to SARIA:

South Aurora Regional Improvement Authority
c/o Special District Management Services, Inc.
Attn: Manager
141 Union Boulevard
Lakewood, CO 80228

With a copy to:
South Aurora Regional Improvement Authority
c/o Spencer Fane LLP
Attn: Tom George
1700 Lincoln Street, Suite 2000
Denver, CO 80203

If to the City:

City of Aurora
Public Works Director
15151 E. Alameda Parkway
Aurora, CO 80012

With a copy to:
City of Aurora
City Attorney's Office
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. Headings. The headings and captions in this Agreement are intended solely for the convenience of reference and shall be given no effect in the construction or interpretation of this Agreement.

I. 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.

J. 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.

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

L. 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.

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

N. 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.

O. 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: _____ Dated: _____
Bob LeGare, Mayor

Attested:

By: _____
Michael Lawson, Interim City Clerk

Approved as to Form:

By: _____
Michelle Gardner, Assistant City Attorney

ARAPAHOE COUNTY

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

Name: _____

Its: _____

**SOUTH AURORA REGIONAL
IMPROVEMENT AUTHORITY**

By: _____

Name: _____

Its: _____

ATTEST:

By: _____

Name: _____

Its: _____

EXHIBIT A

Project Overview

[insert copy of Project Plans/Scope]