

**INTERGOVERNMENTAL AGREEMENT
BETWEEN THE CITY OF AURORA, COLORADO, AND
ARAPAHOE COUNTY, COLORADO
FOR THE DEVELOPMENT OF
NEW PROPOSITION 123 AFFORDABLE HOUSING**

This Intergovernmental Agreement (“Agreement”) is made by and among the City of Aurora, Colorado, a municipality and a political subdivision of the State of Colorado (“Aurora”), and the Board of County Commissioners of the County of Arapahoe, a political subdivision of the State of Colorado (“Arapahoe”), both hereinafter referred to singly as a “Party” or together as the “Parties.”

RECITALS

WHEREAS, pursuant to Colo. Const. art. XIV, § 18, and C.R.S. § 29-1-203, as amended, the Parties are authorized to cooperate and contract with one another to provide any function, service, or facility lawfully authorized to each; and

WHEREAS, in partnership with the Local Planning Capacity (“LPC”) grant program managed by the Colorado Department of Local Affairs (“DOLA”) and created by Proposition 123 (C.R.S. § 29-32-104(3)(c)), the Parties wish to work together to provide affordable housing within the boundaries of Arapahoe County and within the limits of the City of Aurora; and

WHEREAS, the Parties are funding design, construction, and preservation for developments under the Proposition 123 grant program (the “Program”); and

WHEREAS, the Parties wish to enter into this Agreement to set forth their mutual understanding and agreement regarding completion of developments under the Program.

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

AGREEMENT

1. **RECITALS.** The recitals above are incorporated as though fully set forth in this Agreement.

2. **PURPOSE.**

A. **Purpose.** The Program facilitates the development, preservation, and conversion of housing units that serve households across a range of income levels within the jurisdictional boundaries of Arapahoe County and the City of Aurora. Specifically, it supports rental housing affordable to households earning at or below 60 percent of the Area Median Income (AMI); ownership housing affordable to households earning at or below 100 percent of AMI, or up to 120 percent of AMI in high-cost areas as defined by the State of Colorado; and naturally

occurring affordable housing (NOAH) for rental units serving households at or below 80 percent of AMI.

B. Program Implementation. The Parties understand and agree that Arapahoe, in coordination with Aurora, and any and all other applicable entities as necessary, shall be primarily responsible for facilitating, overseeing, and completing the Program. The Parties shall meet and confer in good faith as frequently as is reasonably necessary to work cooperatively and collaboratively.

C. Completion of Program Developments. The Parties will use reasonable efforts to complete the developments as described in this Agreement. Nothing in this Agreement in any way obligates the Parties to contribute to or complete the developments beyond the extent of the developments as described in this Agreement.

D. Communication. The Parties shall keep accurate records of the progress of the Program and shall provide status reports to one another on a regular basis (at a minimum, quarterly), including number of units, type of housing, permit status, legal document verification, state/federal/local funding, and type of project.

3. PROPOSITION 123 ALLOCATION.

A. Collaborative Commitment. The Parties agree that the County may select 60 qualified affordable housing rental units at the development at 1900 S. Chambers Rd.- Brothers Redevelopment PSH with the agreement between the Parties for this development incorporated into the Agreement as Exhibit B, and the County may select 5 qualified affordable housing rental units at the Sanctuary on Potomac development with the agreement between the Parties for this development incorporated into this Agreement as Exhibit C, for a total of 65 qualified affordable housing credits towards the County's Proposition 123 commitment in the first Proposition 123 reporting period, ending December 31st, 2026. After the County satisfies their Proposition 123 commitment, the City may develop additional affordable housing developments in the City and the County, which agreements for those developments will be incorporated into the Agreement as additional exhibits. The Parties agree that the City will claim all the qualified affordable housing rental and for sale units in those additional developments towards the City's Proposition 123 affordable housing unit count commitment in the first Proposition 123 reporting period, ending December 31st, 2026. Both Parties agree that no affordable housing unit will be counted twice.

B. Affordability Period. Pursuant to Proposition 123, the affordability period for the affordable housing rental units to be constructed pursuant to this Agreement shall be 30 years for new construction rental housing. Homeownership for new construction or acquisition/purchase assistance shall have a 10-year affordability period.

4. APPROPRIATIONS. It is expressly understood and agreed that any and all financial obligations described under this Agreement are subject to annual appropriations of the respective parties and do not establish debts or other multi-fiscal year obligations.

5. **OWNERSHIP AND MAINTENANCE OF DEVELOPMENT ELEMENTS.** All right-of-way, improvements, facilities, and appurtenances associated with the developments, if any, will be owned, operated, and maintained by Arapahoe, Aurora, or a third party as mutually agreed upon in one or more separate agreements to be entered into at a later date. Any and all designs, plans, drawings, or other documents prepared by or for Arapahoe to complete any development pursuant to this Agreement shall be considered the joint property of the Parties.

6. **BREACH AND ENFORCEMENT.** It is specifically understood that, by executing this Agreement, subject to section 4 of this Agreement, each Party commits itself to perform pursuant to the terms and conditions contained in this Agreement and that the failure of any Party to fulfill any obligation set forth in this Agreement shall constitute a breach of this Agreement. The Parties agree that this Agreement may be enforced in law for such relief as may be available according to the laws of the State of Colorado.

7. **TERM OF AGREEMENT AND TERMINATION.**

A. **Term.** The term of this Agreement shall begin on the date of the Effective Date as provided in this Agreement and shall last until December 31, 2026.

B. **Default.** Each Party shall have the right to terminate this Agreement after 60 days' written notice to the other Party in the event of a material default that is not cured. However, termination shall not be effective if the defaulting Party has taken reasonable actions to cure the breach before the effective date of the termination and pursued such actions diligently to a successful completion within 60 days from inception of the actions. If such actions are not successful within such period, any non-defaulting Party shall have the right to terminate this Agreement upon written notice to the other Party.

8. **MISCELLANEOUS.**

A. **Assignment.** None of the Parties may assign this Agreement or parts of this Agreement or any rights under this Agreement without the express written consent of the other Party. Any attempt to assign this Agreement in the absence of such written consent shall be null and void.

B. **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 others. Any actions taken by a Party pursuant to this Agreement shall be deemed actions as an independent contractor of the other Party.

C. **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.

D. **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, C.R.S. § 24-10-101, *et seq.*

E. 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.

F. 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 under this Agreement, the exclusive venue for dispute resolution shall be the District Court for and in Arapahoe County, Colorado.

G. 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 in this Agreement, nor shall the waiver of any default under this Agreement be deemed a waiver of any subsequent default under this Agreement.

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

I. Entire Contract. This Agreement constitutes the entire agreement among the Parties with regard to the Program. Any prior agreements, promises, negotiations, or representations not expressly set forth in this Agreement with regard to the Program are of no force and effect.

J. 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.

K. Written Amendment Required. This Agreement may be amended, modified, or changed, in whole or in part, only by written agreement duly authorized and executed by the Parties.

L. Electronic Signatures. The Parties consent to the use of electronic signatures and agree that the transaction may be conducted electronically pursuant to the Uniform Electronic Transactions Act, C.R.S. § 24-71.3-101, *et seq.* The Agreement and any other documents requiring a signature may be signed electronically by either Party. The Parties agree not to deny the legal effect or enforceability of 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 Agreement 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 an electronic signature or that it is not in its original form or is not an original.

M. Compliance with the Law. The City agrees to comply with all local, state, and federal requirements while completing the Program development unless specifically waived.

N. Applicable Law and Venue. This Agreement shall be construed and enforced in accordance with the laws of the State of Colorado. The venue for any legal action arising out of this Agreement shall be in Arapahoe County District Court, pursuant to the appropriate rules of civil procedure.

O. Notices and Communications. Notices under this Agreement shall be sent in writing by first-class mail or by email, unless otherwise designated in writing to:

COUNTY: Arapahoe County
Community Resources Department
1690 W. Littleton Blvd., Suite 300
Littleton, CO 80120
Attn: Katherine Smith, Community Resource Director
Telephone: 303-738-8041
E-mail: ksmith@arapahoegov.org

CITY: City of Aurora, Colorado
Housing and Community Development Division
15151 E. Alameda Parkway
Aurora, CO 80012
Attn: Sarah A. Pulliam, Housing & Community Development Manager
Telephone: 303-739-7601
E-mail: sacarrol@auroragov.org

P. Incorporation of Exhibits. Unless otherwise stated in this Agreement, any exhibits, applications, resolutions, or other documents referenced in this Agreement shall be incorporated by reference into this Agreement for all purposes. In the event of any conflicts between this Agreement and any attached documents, this Agreement shall control.

Q. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original and all of which taken together will constitute one and the same agreement.

R. Effective Date. This Agreement will become effective on the date of the full execution of this Agreement by both Parties (“Effective Date”).

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date this Agreement is fully executed by both Parties. By the signature of its representative below, each

Party affirms that it has taken all necessary action to authorize its representative to execute this Agreement.

Signatures on following page

THE CITY OF AURORA, COLORADO

Mayor Coffman

Date: _____

Attest:

Kadee Rodriguez, City Clerk

Approved as to form:

Tim Joyce, Assistant City Attorney

THE BOARD OF COUNTY COMMISSIONERS
OF THE COUNTY OF ARAPAHOE, COLORADO

By: _____

Date: _____

Printed Name: Katherine Smith _____

on behalf of the Board of County Commissioners, designated signatory authority by Resolution
25-078.

Exhibit A

Proposition 123 Definition of Affordable Housing

Proposition 123 establishes Affordability Thresholds as follows:

- Rental housing at or below 60% AMI, or
- For-sale housing at or below 100% AMI, and
- Which costs the household less than 30% of its monthly income.

Proposition 123 Affordability Mechanism

An Affordability Mechanism is a legally binding agreement ensuring that a housing unit remains affordable for a designated period. Examples can include:

- Deed restrictions
- Promissory Note
- Land Use Restriction Agreements (LURAs)
- Covenants running with the land
- Regulatory agreements enforceable by a jurisdiction or housing authority

New Construction and Preservation/Conversion units must have an Affordability Mechanism. By definition, Naturally Occurring Affordable Housing (NOAH) do not have an Affordability Mechanism, but must meet affordability criteria at the time of counting.

Proposition 123 Counting of Units.

The Parties will comply with Proposition 123 requirements for the counting of the number of affordable housing rental units as provided at [Counting of Units | Colorado Department of Local Affairs](#).

Average Designated Income Determination.

Average designated income by household size must not exceed 60% of the area median income as established by the United States Department of Housing and Urban Development and published by the department or a statewide political subdivision or authority on housing, and a unit in the project must have a gross rent limit that does not exceed thirty percent of the imputed income limitation applicable to the unit; except that where the subprogram is a secondary source of funding, the affordability threshold required by the primary funding source, if any, may be operative.