



**PLANNING & DEVELOPMENT DEPARTMENT MEMORANDUM  
#04-2020**

**DATE:** February 24, 2020

**TO:** Honorable Mayor Meredith Leighty and City Council Members

**THROUGH:** Heather Geyer, City Manager 

**FROM:** Brook Svoboda, Director of Planning and Development   
Eric Ensey, Senior Planner, AICP

**SUBJECT:** CR-48 – Karl’s Farm 120<sup>th</sup> Avenue Cost Share Agreement

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**PURPOSE**

The resolution would approve a cost-sharing agreement for the design and construction of roadway improvements for 120<sup>th</sup> Avenue associated with the 120<sup>th</sup> Transportation Improvement Program (TIP) Grant that will result in the full buildout of a three-lane roadway on 120<sup>th</sup> Avenue between Washington Street and Claude Court.

**BACKGROUND**

Karl’s Farm Development is required to construct specific improvements on 120<sup>th</sup> Avenue to mitigate their impact on the roadway network. These improvements include:

- Constructing a third travel lane between Race Street and Irma Drive for the westbound direction of 120<sup>th</sup> Avenue
- Extended left-turn lanes on 120<sup>th</sup> Avenue at Irma Drive and Race Street (northbound)
- Install a new traffic signal at 120<sup>th</sup> Avenue and Race Street
- Relocate the traffic signal at 120<sup>th</sup> Avenue and Irma Drive

The design and construction of these improvements are conservatively estimated at \$2.45 Million.

The City of Northglenn applied for and received a federal grant to design and construct the “full build-out” of 120<sup>th</sup> Avenue between Washington Street and Claude Court – a three-lane roadway in each direction. The total estimated construction cost is approximately \$11.5 Million. The grant requires the City to provide a 20% cash match. The City was able to leverage Karl’s Farm improvements on 120<sup>th</sup> Avenue towards the City’s cash match for the grant.

This agreement memorializes the financial commitment from Karl’s Farm for their pro-rata share of the total design and construction of the full buildout of 120<sup>th</sup> Avenue between Washington Street and Claude Court. The City, through the federal grant, will design and construct the roadway, including the Karl’s Farm’s portion. Any funds not used for the construction of their improvements would be reimbursed.

The agreement takes into account that if costs increase for the project, Karl’s Farm shall only be obligated for their portion. The agreement also contemplates that if the project is not completed before a request is received for a certificate of occupancy on the site, certificates of occupancy will not be withheld. In general, certificates of occupancy are not issued for new development projects until all infrastructure improvements have been completed and accepted by the City. Since the Karl’s Farm roadway improvements have been incorporated into the overall 120<sup>th</sup> Avenue project that will be managed by the City, the developer does not have control over the schedule and performance of the completion of these improvements. Based on the current schedule outlined

below, staff believes the roadway will be completed before the first certificate of occupancy is requested.

**STAFF RECOMMENDATION**

Staff recommends approval of CR-48.

**BUDGET/TIME IMPLICATIONS**

An approximate schedule for the project, with phases, is listed below:

- February 24, 2020      Approve 120<sup>th</sup> Avenue IGA between Northglenn and CDOT
- March 2020              Award 120<sup>th</sup> Avenue Design Contract
- Q1-Q3 2020              Prepare Construction and Bids Documents
- Q3/Q4 2020              Award Contract for Construction
- Q1 2021                  Start Construction
- Q4 2021/Q1 2022      Project Completed

**STAFF REFERENCE**

If City Council members have any comments or questions, they may contact Brook Svoboda, Director of Planning and Development, at 303.450.8937 or [bsvoboda@northglenn.org](mailto:bsvoboda@northglenn.org).

SPONSORED BY: MAYOR LEIGHTY

COUNCILMAN'S RESOLUTION

RESOLUTION NO.

No. CR-48  
Series of 2020

\_\_\_\_\_  
Series of 2020

A RESOLUTION APPROVING AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KARL'S FARM METROPOLITAN DISTRICT NO. 2 REGARDING THE DESIGN AND CONSTRUCTION OF IMPROVEMENTS TO 120<sup>TH</sup> AVENUE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NORTHGLENN, COLORADO, THAT:

Section 1. The Agreement between the City of Northglenn and Karl's Farm Metropolitan District No. 2, attached hereto as Exhibit 1, regarding reimbursement of costs for the design and construction of improvements to 120<sup>th</sup> Avenue is hereby approved and the Mayor is authorized to execute same on behalf of the City of Northglenn, Colorado.

DATED at Northglenn, Colorado, this \_\_\_\_ day of \_\_\_\_\_, 2020.

\_\_\_\_\_  
MEREDITH LEIGHTY  
Mayor

ATTEST:

\_\_\_\_\_  
JOHANNA SMALL, CMC  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
COREY Y. HOFFMANN  
City Attorney

**AN AGREEMENT BETWEEN THE CITY OF NORTHGLENN AND KARL'S FARM METROPOLITAN DISTRICT NO. 2, REGARDING THE DESIGN AND CONSTRUCTION OF PORTIONS OF 120<sup>TH</sup> AVENUE**

The following Agreement is made on this \_\_\_ day of \_\_\_\_\_, 2020, between the City of Northglenn (the "City") and Karl's Farm Metropolitan District No. 2 (the "District") regarding the design, construction and construction management of portions of 120<sup>th</sup> Avenue. The City and the District are collectively referred to as the "Parties."

WHEREAS, the City and the District desire to share in the costs of the design, construction and construction management of certain roadway improvements to 120<sup>th</sup> Avenue that serves both the Karl's Farm development and serves the City generally, as more particularly described in **Exhibit A**, attached hereto and incorporated herein by this reference (the "Roadway Improvements" or the "Project"), based on the Parties' agreed upon proportionate share of the design and construction cost, taking into account the impact on the roadway system necessitated by the Karl's Farm development proposed development;

WHEREAS, the total project cost for the design, construction and construction management of the Roadway Improvements has been estimated at the cost of Nine Million, One Hundred Twelve Thousand, One Hundred Fifty Dollars and fifty-three cents (\$9,112,150.53), plus a Two Million Four Hundred Fifty Five Thousand, Nine Hundred Eighty-three Dollars and fifty cents (\$2,455,983.50) contingency for a total of Eleven Million, Five Hundred Sixty Eight Thousand, One Hundred Thirty-Four Dollars and three cents (\$11,568,134.03); and

WHEREAS, the Parties desire to fund the design, construction and construction management of the Roadway Improvements as more particularly described in this Agreement.

**TERMS**

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the City and District hereby agree as follows:

1. Recitals Incorporated. The recitals set forth above are incorporated into this Agreement, and shall be deemed terms and provisions hereof, to the same extent as if fully set forth in this Section.
2. Contribution by the Parties to the Cost of Design, Construction and Construction Management.
  - A. The Parties shall contribute the total amount of Eleven Million, Five Hundred Sixty-Eight Thousand, One Hundred Thirty-Four Dollars and three cents (\$11,568,134.03) in the proportionate amounts of Nine Million, Two Hundred Eighty-One Thousand, Twenty-Nine Dollars and two cents (\$9,281,029.02), reflecting an 80.22% share contribution by the City and Two Million, Two Hundred Eighty-Seven Thousand, One Hundred Five Dollars and one cent (\$2,287,105.01), reflecting a 19.77% contribution by the District (the "Funding Allocation") to the

cost of design, construction and construction management of the Roadway Improvements.

- B. The Parties shall each contribute the amounts set forth above to a Special Account created by the City for the sole purpose of funding the design, construction and construction management of the Roadway Improvements (the "Special Account"). Such amounts shall be paid into the Special Account prior to the City expending, or agreeing to spend, any funds on the design, construction and construction management of the Roadway Improvements. On or before March 31, 2020, the City will provide formal notice of the amount due under this Agreement, and the Parties shall remit the amounts due to the Special Account no later than thirty (30) calendar days after receiving formal notice from the City that the City has received an acceptable bid in order for the City to accept a bid for the design, construction and/or construction management of the Roadway Improvements. The City agrees to provide copies of the bids received to the District for review and approval together with notice of which bid the City intends to accept. The City may elect to bid the design services separately from the construction and construction management, or may elect to bid the Roadway Improvements as a form of design bid contract. If the City elects to bid the design services separately, the process set forth in this Agreement for the Funding Allocation and the creation of the Special Account shall be created to allow for two special accounts: one for design, and for construction and construction management. However, if the City determines to bid the Project as a design bid contract, only one special account shall be created for the Project in accordance with this Agreement. If the District does not object to a proposed bid within five (5) days following receipt of the same, it shall be deemed that the District has approved the same and thereafter, the City agrees to accept a bid and award the design, construction and management agreement or agreements within ten (10) days following District's approval or deemed approval of the bid or bids and full funding of the Special Account.
- C. The City shall not enter into any contract for the design, construction and/or construction management of the Roadway Improvements until the City, at its sole discretion, determines that it has sufficient funding within the Special Account to contract for the total cost of design, construction and construction management of the Roadway Improvements.
- D. In the event the Parties, collectively or individually, do not make the contributions necessary to cause the Roadway Improvements to be completed, the City shall have the sole discretion to terminate the Roadway Improvements Project, and return the funds in the Special Account to the Parties in the same proportion in which they were received. The District hereto further waives any right to seek recovery of any funds actually paid by the City to others to pay for costs of the Roadway Improvements as set forth herein.
- E. Following full funding of the Special Account and award of a contract for the design, construction and management contract for the Roadway Improvements, any

change orders that would increase the cost thereof by more than 10% must be approved by the City and District. Prior to issuing any change orders that increase the cost of the Roadway Improvements, such cost increase must be funded by the Parties in the same proportions as set forth in Section 2A above. The City agrees to provide the District with copies of invoices from the contractor as well as monthly status updates on the schedule of design and construction and the completion of such components of the Project.

- F. Upon completion of the Project, which shall be triggered by the Final Settlement by the City in accordance with the provisions of C.R.S. § 38-26-107, the City shall, within thirty (30) days thereafter, return funds, if any, remaining in the special account to the Parties in the same proportion in which they were received.

3. Design, Construction and Construction Management of the Roadway Improvements. The City shall contract for, manage, and cause the design, construction, and construction management of the Roadway Improvements. The City shall utilize the contracting procedures set forth in the Northglenn Municipal Code for the design, construction and on-site construction management of the Roadway Improvements. The City agrees to spend the amounts more particularly described in this Agreement that are received from the District for the design, construction and construction management of the Roadway Improvements. Subject to *force majeure*, the City agrees that construction shall be completed no later than eighteen (18) months after the City issues a Notice to Proceed to the Contractor, provided that the District has placed its contributions in the Special Account. Provided that the District has complied with the provisions of this Agreement, the City shall not withhold building permits or certificates of occupancy for any portion of the Karl's Farm development that has otherwise received the necessary land use approvals.

5. Miscellaneous.

- A. The City and the District are separate, independent entities and shall maintain such status throughout.
- B. It is understood and agreed that this Agreement is intended to facilitate cooperation between the City and the District regarding the design construction and construction management of the Roadway Improvements, but nothing in this Agreement shall be construed to establish a separate legal entity and, except as set forth herein, this Agreement does not authorize any Party to act for another for any other purpose whatsoever.
- C. Notices. Any notices required or permitted by this Agreement shall be in writing and shall be deemed to have been sufficiently given for all purposes if hand-delivered, sent by certified mail or registered mail, postage and fees prepaid, addressed to the Party to whom such notice is to be given at the address set forth on the signature page below, or at such other address as has been previously furnished in writing, to the City and the District. Such notice shall be deemed to have been given when deposited in the United States mail.

- D. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the City and the District and are not intended in any way to define, limit or describe the scope or intent of this Agreement.
- E. Integration and Amendment. This Agreement represents the entire agreement between the City and the District with regard to the subject matter of this agreement and there are no oral or collateral agreements or understandings. This Agreement may be amended only by an instrument in writing signed by the City and the District. If any provision of this Agreement is held invalid or unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Agreement shall continue in full force and effect.
- F. Governing Law. This Agreement shall be governed by the laws of the State of Colorado.
- G. Venue. Venue for any actions under this contract shall be in Adams County, Colorado.
- H. Force Majeure. Subject to the following provisions, time is of the essence. Any delays in or failure of performance by either the City or the District of its obligations under this Agreement shall be excused if such delays or failure are a result of acts of God, fires, floods, earthquake, strikes, labor disputes, regulation or order of civil or military authorities, or other causes, similar or dissimilar, which are beyond the control of the City or the District.

**IN WITNESS WHEREOF**, the City and District have caused this Agreement to be executed as of the day and year first above written.

**CITY OF NORTHGLENN, COLORADO**

By: \_\_\_\_\_  
Meredith Leighty, Mayor

ATTEST:

\_\_\_\_\_  
Johanna Small, CMC, City Clerk

KARL'S FARM METROPOLITAN DISTRICT  
NO. 2


  
By: Daniel Frank  
Its: VP

STATE OF COLORADO )  
 ) ss.  
COUNTY OF DENVER )

The foregoing instrument was subscribed, sworn to, and acknowledged before me this  
21 day of JANUARY, 2020, by DANIEL FRANK, as the VP of Karl's  
Farm Metropolitan District No. 2.

My commission expires: 04SEP2023

(S E A L)

  
Notary Public

**LUKE TIETJENS VIRDEN**  
**NOTARY PUBLIC**  
**STATE OF COLORADO**  
**NOTARY ID 20194033390**  
**MY COMMISSION EXPIRES 04SEP2023**



# EXHIBIT A

## 120th AVE DESIGN & CONSTRUCTION COSTS

Construction Cost	\$9,112,150.53
Contingency	\$2,455,983.50
Total	\$11,568,134.03

Shared Cost Allocation		
City	80.22%	\$9,281,029.03
District	19.77%	\$2,287,105.00
Total		\$11,568,134.03