

AN AGREEMENT AMONG THE CITY OF NORTHGLENN, RALSTON HOUSE, THE CITIES OF WESTMINSTER, THORNTON, FEDERAL HEIGHTS, BRIGHTON, COMMERCE CITY AND AURORA, THE CITY AND COUNTY OF BROOMFIELD AND THE COUNTY OF ADAMS REGARDING CONSTRUCTION AND CONSTRUCTION MANAGEMENT OF THE NORTHGLENN RALSTON HOUSE

The following Agreement (the "Phase 2 Agreement") is made on this ____ day of _____, 2017, by and among the City of Northglenn, Ralston House, a Colorado Nonprofit Corporation ("Ralston House") and the Cities of Westminster, Thornton, Federal Heights, Brighton, Commerce City and Aurora, the City and County of Broomfield and the County of Adams (all parties with the exception of the Ralston House may be collectively referred to as the "Municipal Parties"):

WHEREAS, Section 18(2)(a) of Article XIV of the Colorado Constitution and Sections 29-1-201, et seq., and 29-20-105 of the Colorado Revised Statutes authorize and encourage governments to cooperate by contracting with one another for their mutual benefit; and

WHEREAS, the City of Northglenn ("Northglenn") is the owner of a certain parcel of Property located within the City of Northglenn more specifically described in the attached **Exhibit A** (the "Property"); and

WHEREAS, Ralston House is a child advocacy center which for many years has provided professional and comprehensive services for sexually, physically, and emotionally abused children and their families; and

WHEREAS, the Ralston House provides a valuable public service which preserves and promotes the safety, health, and welfare of the citizens within their communities; and

WHEREAS, Ralston House currently provides these services through its Jefferson County facilities, and recently through a facility located on the Property; and

WHEREAS, based on the services currently being provided, the Municipal Parties have previously contributed to developing the design of a new child advocacy center facility to be known as the "Northglenn Ralston House" pursuant to a separate agreement (the "Phase 1 Agreement"); and

WHEREAS, based on the resulting design drawings and associated construction cost estimates, and consistent with Section 3 of the Phase 1 Agreement, the Municipal Parties now desire to enter into this Phase 2 Agreement for the construction and construction management of the Northglenn Ralston House (the "Project"); and

WHEREAS, the Northglenn Ralston House has been designed to provide professional and comprehensive services for sexually, physically, and emotionally abused children and their families to Adams County and Broomfield families in support of law enforcement agencies and the District Attorney now and into the future; and

WHEREAS, the total project cost for the design, construction, and construction management of the Northglenn Ralston House has been estimated at the cost of One Million, Seven Hundred Thousand Dollars (\$1,700,000.00) (the "Total Project Cost"); and

WHEREAS, the Municipal Parties have previously contributed the amount of Two Hundred and Seventy Thousand Dollars (\$270,000.00) for the Phase 1 Agreement; and

WHEREAS, the Municipal Parties desire to fund the construction and construction management of the Northglenn Ralston House in the additional amount of One Million, Seventy-Two Thousand, Five Hundred Dollars (\$1,072,500.00) pursuant to this Phase 2 Agreement, but recognize this amount creates a potential shortfall of approximately Three Hundred Fifty-Seven Thousand, Five Hundred Dollars (\$357,500.00) (the "Shortfall Amount"); and

WHEREAS, the Municipal Parties and the Ralston House desire to seek grant funding to pay the Shortfall Amount; and

WHEREAS, the Municipal Parties desire that the proportionate contributions set forth herein in **Exhibit B** be appropriated to pay the cost of construction and construction management of the Northglenn Ralston House pursuant to this Phase 2 Agreement; and

WHEREAS, in the event funds to cover the Shortfall Amount are not achieved through grants or other sources, the Municipal Parties agree to convene and determine a course of action with respect to the Project.

TERMS

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

1. Recitals Incorporated. The recitals set forth above are incorporated into this Phase 2 Agreement, and shall be deemed terms and provisions hereof, to the same extent as if fully set forth in this Section.

Contribution by the Municipal Parties to the Cost of Construction and Construction Management.

- A. The Municipal Parties shall contribute the total amount of One Million, Seventy-Two Thousand, Five Hundred Dollars (\$1,072,500.00), in the proportionate amounts set forth in **Exhibit B**, attached hereto and incorporated herein by this reference (the "Funding Allocation") to be used exclusively for the cost of construction and construction management of the Northglenn Ralston House.
- B. The Municipal Parties shall each contribute the amounts set forth in **Exhibit B** to a Special Account created by the City of Northglenn for the sole purpose of funding the construction and construction management of the Northglenn Ralston House (the "Special Account"). Such amounts, including any unexpended Phase 1 Agreement contributions, along with the Shortfall Amount, shall be paid into

the Special Account prior to Northglenn entering into a contract for construction, expending, or agreeing to spend any funds on construction and construction management of the Northglenn Ralston House. Prior to entering into a contract for construction, the City of Northglenn will provide formal notice to the Municipal Parties to remit the amount due under this Agreement, and each of the Municipal Parties shall remit the balance due no later than thirty (30) calendar days after receiving formal notice.

- C. Northglenn shall not enter into any contract for the construction of the Northglenn Ralston House until Northglenn, at its sole discretion, determines that it has sufficient funding within the Special Account to contract for the total cost of constructing the Northglenn Ralston House. In the event the lowest responsive and responsible contractor exceeds the Total Project Cost less the costs incurred pursuant to the Phase 1 Agreement, the Parties agree to meet and confer to determine a course of action for resolving the shortfall. If the Parties subsequently agree to terminate this agreement all monies shall be returned in the same fiscal year in which they were collected.
- D. The Project construction documents and associated contracts with the selected contractor shall specifically provide that there is no privity of contract with any Party and the successful contractor except the City of Northglenn. This Phase 2 Agreement does not create joint and several liability among the Parties as it relates to the Project construction contract.
- E. In the event the Parties, collectively or individually, do not make the contributions necessary to cause the Project to be completed, Northglenn shall have the sole discretion to terminate the Project, and return those funds remaining in the Special Account to the Parties in the same proportion in which they were received. The Parties hereto further waive any right to seek recovery of any funds actually paid by Northglenn to others to pay for costs of the Project as set forth herein.
- F. Upon completion of the Project, which shall be triggered by the Final Settlement by Northglenn in accordance with the provisions of C.R.S. § 38-26-107, Northglenn shall return funds, if any, remaining in the Special Account to the Municipal Parties in the same proportion in which they were received within six (6) months of issuance of a certificate of occupancy, except as provided in paragraph 4(C).

3. Construction and Construction Management of the Northglenn Ralston House.

- A. Northglenn shall contract for, manage, and cause the construction of the Northglenn Ralston House to be completed on the Property. Northglenn shall directly provide general project management services at its sole cost, and may contract with a third party for on-site construction management services which cost shall be included in the Total Project Cost. Northglenn shall utilize the contracting procedures set forth in the Northglenn Municipal Code for the

construction and on-site construction management of the Northglenn Ralston House. Northglenn agrees to spend the amounts more particularly described in this Phase 2 Agreement that are received from the Municipal Parties solely for the construction and construction management of the Northglenn Ralston House.

- B. Northglenn further agrees, at Northglenn's sole cost and expense, to secure any permits required for the Project and to undertake and complete all necessary site preparation work on the Property, including, but not limited to, necessary environmental assessment and all required remediation, relocation of the existing diesel generator and police evidence building, and demolition and removal of the existing Ralston House once the Project for the Northglenn Ralston House is completed as evidenced by the issuance of a permanent certificate of occupancy. The contributions of the Municipal Parties shall not be used to complete the work outlined in this paragraph.
- C. In addition, Northglenn agrees to record against the Property a Deed Restriction in the form attached hereto as **Exhibit C**, and incorporated herein by this reference, agreeing to use the Property as a child advocacy center by the Ralston House or by another entity providing similar services as agreed to by the Municipal Parties, for a period of thirty (30) years from the date that a permanent certificate of occupancy is issued for the completed structure by the local building official, or such lesser time as agreed to by the Parties hereto. The Deed Restriction shall also provide that Northglenn is prohibited from conveying the Property or using the Northglenn Ralston House as collateral of any nature whatsoever during the thirty (30) year period. The Deed Restriction shall be recorded with the Adams County Clerk and Recorder within thirty (30) days after executing a construction contract.
- D. Northglenn agrees not to reduce the square footage of the building in such a manner so as to significantly reduce the functionality of the Northglenn Ralston House. For purposes of this subsection D., the functionality of the Northglenn Ralston House requires no less than three (3) independent and functional pods, and a separate and independent medical room

4. Grant Application(s).

- A. The Municipal Parties and Ralston House acknowledge and agree that the amount provided by the Municipal Parties pursuant to this Phase 2 Agreement is insufficient to complete the construction of the Northglenn Ralston House, and results in the Shortfall Amount. Ralston House and the City of Northglenn, with the cooperation of the other Municipal Parties hereto, shall apply for grant applications to obtain sufficient funding to construct the Northglenn Ralston House.
- B. In the event the Municipal Parties are unable to obtain the Shortfall Amount through grant funding, prior to executing any construction agreement, the

Municipal Parties agree to meet and confer and determine a course of action for resolving the Shortfall Amount, which may include utilization of the proportionate amounts set forth in **Exhibit B**.

- C. In the event such grant funding is obtained in excess of the Total Project Cost, such additional grant funding may be used to pay for the furniture, fixtures, and equipment needed to properly equip the facility. Any grant funds received in excess of the Total Project Cost and furniture, fixtures, and equipment costs shall be refunded to the Municipal Parties in the same proportion as provided in the contribution formula (**Exhibit B**) within six (6) months of the issuance of a permanent certificate of occupancy.

5. Covenant Regarding Funding Obligations. Each Municipal Party to this Agreement covenants and agrees to appropriate sufficient funds in their respective 2017 budgets in an amount sufficient to pay the construction and construction management costs set forth in **Exhibit B** to this Phase 2 Agreement. The Municipal Parties acknowledge and agree that in reliance upon such covenants, and subject to receipt of the Shortfall Amounts, Northglenn shall represent that it has sufficient funds to enter into a contract for the construction and construction management of the Northglenn Ralston House as more particularly described in Section 2 of this Agreement.

6. Operation of the Northglenn Ralston House. In consideration for the financial commitments hereunder, and as long as Ralston House is organized as a nonprofit corporation dedicated to providing services for sexually, physically and emotionally abused children and their families, Ralston House agrees for the benefit of the Municipal Parties to provide services to victims and witnesses of crime, including children and adults, for a period of thirty (30) years from the date that a permanent certificate of occupancy is issued for the completed structure by the local building official, or such lesser time as may be mutually agreed to by the Parties hereunder. These services include forensic interviews, victim advocacy, pediatric sex assault medical examinations and other services appropriate for victims and witnesses of crime. Northglenn further agrees to enter into a lease agreement with Ralston House, or another entity providing similar services, to formally set forth the terms and conditions related to the use of the Northglenn Ralston House.

7. Ralston House Lease; Utilities; Maintenance. Northglenn and Ralston House shall prior to completion of the Northglenn Ralston House execute a replacement lease to terminate the existing lease on the Property, and execute a new lease for the Northglenn Ralston House addressing standard lease terms, including, but not limited to, payment of utilities, trash and snow removal, maintenance, repairs and alteration, and such other commercially reasonable terms upon which Northglenn and Ralston House may agree. A copy of the executed Lease shall be provided to the Municipal Parties upon request. In no event are the Municipal Parties, except Northglenn, responsible for any routine and preventive maintenance, utility costs, and on-going capital maintenance associated with the Northglenn Ralston House. Northglenn or Northglenn's designee shall be responsible for on-going capital maintenance.

8. Miscellaneous.

- A. None of the Municipal Parties hereto waive the rights, limitations, and defenses of the Colorado Governmental Immunity Act, or other rights or protections as otherwise provided by law.
- B. The Municipal Parties hereto are separate, independent governmental entities and shall maintain such status throughout.
- C. This Phase 2 Agreement may be executed by the Parties with separate signature pages.
- D. It is understood and agreed that this Phase 2 Agreement is intended to facilitate cooperation between the Parties hereto, and cause the Northglenn Ralston House to be constructed and utilized by the Parties hereto, but nothing in this Phase 2 Agreement shall be construed to establish a separate legal entity and, except as set forth herein, this Phase 2 Agreement does not authorize any Party to act for another for any other purpose whatsoever.
- E. Northglenn agrees to provide periodic reports to the Parties as to the progress of construction as well as an accounting of the funds in the Special Account until the Project is completed. In addition, Northglenn agrees to provide access to the books and records associated with the Project as may be reasonably requested by the Municipal Parties.
- F. Northglenn or the service provider leasing the Property shall provide an annual electronic update to the Municipal Parties addressing the Property repairs completed during the year and the overall condition of the Property.
- G. Notices. Any notice required or permitted by this Phase 2 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 other Parties. Such notice shall be deemed to have been given when deposited in the United States mail.
- H. Paragraph Captions. The captions of the paragraphs are set forth only for the convenience and reference of the Parties and are not intended in any way to define, limit or describe the scope or intent of this Phase 2 Agreement.
- I. Integration and Amendment. This Phase 2 Agreement represents the entire agreement between the Parties with regard to the subject matter of this agreement and there are no oral or collateral agreements or understandings. This Phase 2 Agreement may be amended only by an instrument in writing signed by the Parties. If any provision of this Phase 2 Agreement is held invalid or

unenforceable, no other provision shall be affected by such holding, and all of the remaining provisions of this Phase 2 Agreement shall continue in full force and effect. All exhibits referred to herein are incorporated herein by this reference.

- J. Governing Law. This Phase 2 Agreement shall be governed by the laws of the State of Colorado.
- K. Venue. Venue for any actions under this Phase 2 Agreement shall be in Adams County, Colorado.
- L. No Third-Party Beneficiaries. It is understood and agreed that enforcement of the terms and conditions of this Agreement and all rights of action relating to such enforcement will be strictly reserved to the Parties. It is the intention of the Parties and any person other than the Parties be deemed to be only an incidental beneficiary.

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

CITY OF NORTHGLENN, COLORADO

By: _____
Joyce Downing, Mayor

Date: _____

ATTEST:

Johanna Small, CMC, City Clerk

APPROVED AS TO FORM:

Corey Y. Hoffmann, City Attorney

Address:
11701 Community Center Drive
Northglenn, CO 80233

RALSTON HOUSE

By: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

Address:
c/o City of Arvada
8101 Ralston Road
Arvada, CO 80002

CITY OF WESTMINSTER, COLORADO

By: _____
Donald M. Tripp, City Manager

Date: _____

ATTEST:

Linda Yeager, City Clerk

APPROVED AS TO LEGAL FORM:

David Frankel, City Attorney

Address:
4800 West 92nd Avenue
Westminster, CO 80031

CITY OF THORNTON, COLORADO

By: _____
Jack Ethredge, City Manager

Date: _____

ATTEST:

Nancy Vincent, City Clerk

APPROVED AS TO FORM:
Luis Corchado, City Attorney

_____, Deputy City Attorney

Address:
9500 Civic Center Drive
Thornton, CO 80229

CITY OF FEDERAL HEIGHTS, COLORADO

By: _____
_____, Mayor

Date: _____

ATTEST:

Patti Lowell, CMC, City Clerk

APPROVED AS TO FORM:

William P. Hayashi, City Attorney

Address:
2380 West 90th Avenue
Federal Heights, CO 80260

CITY OF BRIGHTON, COLORADO

By: _____
Richard N. McLean, City Mayor

Date: _____

ATTEST:

Natalie Hoel, City Clerk

APPROVED AS TO FORM:

Margaret R. Brubaker, City Attorney

Address:
500 South 4th Avenue
Brighton, CO 80601

CITY OF COMMERCE CITY, COLORADO

By: _____

Date: _____

ATTEST:

Laura Bauer, City Clerk

APPROVED AS TO FORM:

Robert Sheesley, City Attorney

Address:
7887 East 60th Avenue
Commerce City, CO 80022

CITY OF AURORA, COLORADO

By: _____
Stephen D. Hogan, Mayor

Date: _____

ATTEST:

Janice Napper, City Clerk

APPROVED AS TO FORM:
Michael J. Hyman, City Attorney

Assistant City Attorney

Address:
151 East Alameda Parkway
Aurora, CO 80012

CITY AND COUNTY OF BROOMFIELD

By: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

William A. Tuthill III, City and County Attorney

Address:

One DesCombes Drive
Broomfield, CO 80020

ADAMS COUNTY

By: _____

Date: _____

ATTEST:

APPROVED AS TO FORM:

Heidi M. Miller, County Attorney

Address:

4430 South Adams County Parkway
Brighton, CO 80601