PUBLIC NOTICE OF
REGULAR BOARD MEETING

The Arvada Urban Renewal Authority (AURA) Board of Commissioners will hold its regular board meeting in a hybrid format that will allow for in-person attendance at 5601 Olde Wadsworth Blvd, Suite 210, Arvada, CO 80002, or virtual attendance via Zoom Webinar at **3:00 p.m**. on **Wednesday, February 2, 2022.**

Anyone wishing to attend virtually may register in advance as follows:

https://us06web.zoom.us/webinar/register/WN_QsxaSa2RSG2SJrpGsbGTwg

After registering, you will receive a confirmation email containing information about joining the webinar.

If you need assistance with the virtual webinar process or have questions or comments for the AURA Board regarding the agenda items, please contact cbriscoe@arvada.org prior to noon on February 2, 2022. A recording of the meeting will be posted on AURA's website following the webinar.

Agenda information is attached.

______Carrie Briscoe____
Carrie Briscoe
AURA Project Manager/Recording Secretary

POSTED: January 28, 2022

REGULAR MEETING OF THE AURA BOARD OF COMMISSIONERS
5601 Olde Wadsworth Boulevard, Ste. 210, Arvada, Colorado
3:00 p.m., Wednesday, February 2, 2022

AGENDA

REGULAR MEETING – 3:00 P.M.

1. Call to Order
2. Moment of Reflection and Pledge of Allegiance
3. Roll Call of Members
4. Approval of the Summary of Minutes
5. Public Comment of Issues not scheduled for Public Hearing – Three Minute Limit
6. Public Hearing – None
7. Study Session – None
8. Old Business – None
9. New Business
   A. AR-2022-01: A Resolution Authorizing Designated Arvada Urban Renewal Authority Officials To Act For And On Behalf Of The Arvada Urban Renewal Authority Relating To Financial Transactions

   B. AR-2022-02: A Resolution Of The Board Of Commissioners Of The Arvada Urban Renewal Authority Approving The Contract To Buy And Sell Real Estate (Commercial) For Property Located At 5603 Yukon Street Between The Arvada Urban Renewal Authority As Buyer And Yukon Street Studios, LLC As Seller

   C. Interior Design Contract – SAR+

   D. AR-2022-03:A Resolution Of The Board Of Commissioners Of The Arvada Urban Renewal Authority Approving The Loan Agreement Between The City Of Arvada And The Arvada Urban Renewal Authority
10. Development Update
11. Public Comment – Five Minute Limit
12. Comments from Commissioners
13. Committee Reports
14. Staff Reports
    A. Summary of Aurora Urban Renewal Authority v. Kaiser Memorandum
15. Executive Session – None
16. Adjournment

REGULAR MEETING

1. **Call to Order** – Chair Alan Parker called the meeting to order at 3:00 p.m.

2. **Moment of Reflection and Pledge of Allegiance**

3. **Roll Call of Commissioners:**
Those Present: Chair Alan Parker, Vice Chair Paul Bunyard, Treasurer Sue Dolan
Commissioners Tony Cline, Tim Steinhaus

Those Absent: Commissioner Marc Williams and Commissioner Eli Feret

AURA staff present: Maureen Phair, Executive Director; Carrie Briscoe, Project Manager;
Corey Hoffmann, Legal Counsel, Peggy Salazar, Admin Specialist

Also present: Justin Knowles, Canaan Reeverts, Andy Stewart, and three guests.

Commissioner Steinhaus moved to excuse Commissioners Williams and Feret.

The following votes were cast on the Motion:
Voting yes: Dolan, Parker, Cline, Steinhaus, Bunyard
Absent: Williams and Feret
The Motion was Approved.

4. **Approval of the Summary of Minutes**
The Summary of Minutes of the November 3, 2021 AURA Regular Board Meeting stands approved.

5. **Public Comment on Issues Not Scheduled for Public Hearing – Three Minute Limit**

Pete Kazura stated that he is an Arvada resident, the owner of the property that contains Flights Wine Café, and an Olde Town Arvada advocate. He participates in leadership roles on the Arvada Festivals Committee, the Olde Town Arvada Design Review Committee, the Arvada Economic Development Association, and is the Vice President of the Olde Town Arvada Business Improvement District Board. He intends to apply for the open seat on AURA's Board of Commissioners and wanted to introduce himself to the Board in person. He realizes he is already committed to many boards and commissions, but is willing to relinquish any of those positions to be considered for the AURA Board.

6. **Public Hearing**

None

7. **New Business**

Chair Parker requested permission to reorder the agenda in order to put guest speakers contributing to the agenda first as follows:

Agenda Item 7 as New Business
Agenda Item 8 remaining as Old Business
Agenda Item 9 as Study Session

Commissioner Dolan motioned to reorder agenda as stated above.

The following votes were cast on the Motion:
Voting yes: Dolan, Parker, Cline, Steinhaus, Bunyard
Absent: Williams and Feret
The Motion was Approved.

A. Floodplain Discussion – Andy Stewart – City of Arvada

Mr. Stewart informed AURA of Mile High Flood District's (MHFD) preliminary floodplain findings related to properties along the Van Bibber Creek in the Ralston Fields Urban Renewal Area. The City will be working with MHFD as they flesh out their findings and develop remedies to mitigate flooding according to the preliminary findings.

8. Old Business

A. Alley Undergrounding Utilities Options – Justin Knowles and Canaan Reeverts – Kimley Horn

Mr. Knowles and Mr. Reeverts presented two options to underground overhead utilities within the alley located between Yukon Street and Olde Wadsworth Blvd.

The AURA Board had a variety of questions related to the benefits of transformers on the ground versus on the existing poles since the ground-based transformers will require additional right-of-way dedication and be a physical presence at ground level. The AURA Board directed AURA Staff to work with the consultant to develop visuals and cost estimates to assist in discussing the project with the various building owners along the alley.

9. Study Session

A. 10-year Forecast

Maureen Phair presented AURA's 10-year forecast that takes into account AURA's projected revenues and expenses across each of its urban renewal areas.

10. Development Update

Maureen Phair provided the following development updates:

Trammell Crow –

Apartments – They received their foundation permit, under construction. Waiting on their building permits.
Retail – They received a conditional FDP, resubmitting next week. They need a site disturbance permit – hopefully later this month. They already have their building permits.

Berkeley Townhomes – under construction

Ralston Gardens – The presubmittal meeting with the City was held yesterday. Developer needs a major modification to eliminate the balconies which requires a third neighborhood meeting and public hearings before Planning Commission and City Council.

Kmart – The asbestos abatement will begin soon. Demolition will follow in late January/early February.

Flour Mill – AURA will hire a consultant to help create a plan to improve the museum experience.

Calendar Buildings – The property owner is looking to come the February Board meeting.

Loftus – They are negotiating the GMP (guaranteed maximum price) with Farrington. Loftus is on track with a bank for the construction loan. Looking to close and break ground in April.

AURA received the draft Escrow Agreement today from Loftus' attorney and will be reviewing it. AURA's funds will be going into this escrow account. The agreement will be presented to the Board for approval in the next month or two.

Ralston Commons Townhome Site – Despite several back and forth discussions regarding guarantees within the contract, a purchase and sale agreement is forthcoming.

11. Public Comment – Five Minute Limit

None

12. Comments from Commissioners

Vice Chair Bunyard – He recently met with George Thorn with Mile High Developments who complimented AURA's support for their project.

Treasurer Dolan – She will have to attend next month's meeting via Zoom because she'll be out of town.

Commissioner Steinhaus – Complimented AURA staff on the 10-year forecast work.

Chair Parker – Expressed his gratitude in light of the Marshall Fire tragedy.

13. Committee Reports

Maureen Phair proposed a new committee to participate in the Flour Mill project. Tim Steinhaus and Eli Feret both expressed interest. Tim Steinhaus was selected to participate as the AURA Board representative.

14. Staff Reports

Ms. Phair stated that the Flash Report is in the Board packet.

Carrie Briscoe apprised the Board of the upcoming 2021 financial audit.

AURA Legal Counsel, Corey Hoffman, reported that a decision will made soon regarding the Aurora Urban Renewal Authority case.

15. Executive Session

A. Corey Hoffmann, Legal Counsel, stated the need for an Executive Session for Legal Advice, Pursuant to CRS 24-6-402(4)(b) related to the Shops at Ralston Creek PIF and Instructing Negotiators, Pursuant to CRS 24-6-402(4)(e) related to a Property Acquisition in Olde Town Station Area.

Treasurer Dolan moved to go into Executive Session for the reasons stated by Legal Counsel.

The following votes were cast on the Motion:

Voting yes: Dolan, Parker, Cline, Steinhaus, Bunyard
Absent: Williams and Feret
The Motion was Approved.

The AURA Board convened into the Executive Session at approximately 4:47 p.m. and reconvened into the Regular Meeting at approximately 5:20 pm

16. Adjournment

Chair Parker adjourned the meeting at approximately 5:21 p.m.

____
Alan Parker, Chair

ATTEST:

____
Maureen Phair, Executive Director

____
Carrie Briscoe, Recording Secretary

RESOLUTION AR-22-01

A RESOLUTION AUTHORIZING DESIGNATED ARVADA URBAN RENEWAL AUTHORITY OFFICIALS TO ACT FOR AND ON BEHALF OF THE ARVADA URBAN RENEWAL AUTHORITY RELATING TO FINANCIAL TRANSACTIONS

BE IT RESOLVED BY THE ARVADA URBAN RENEWAL AUTHORITY BOARD OF COMMISSIONERS OF ARVADA, COLORADO:

Section 1. Any one of the following designated officials of the Arvada Urban Renewal Authority (AURA) is hereby authorized to approve electronic funds transfers involving the deposit or withdrawal of AURA funds and any two of the following designated officials of AURA are hereby authorized to perform any of the following acts on behalf of AURA:

A. Collect, cash, negotiate, endorse, and assign in the name of AURA, all checks, drafts, notes, and all other negotiable instruments or paper payable to AURA, or in which AURA has an interest, for deposit to the credit of AURA, in any bank or savings and loan association in which AURA has an account;

B. Issue and sign checks drawn against funds of AURA on deposit in any bank or savings and loan association, including checks drawn to the individual order of any person(s) appearing thereon as signer(s); and

C. Perform such other acts that may be incidental to the authority and powers granted above.

The designated officials are: Alan K. Parker, Chair; Sue E. Dolan, Treasurer; Maureen C. Phair, Executive Director; and Bryan Archer, Director of Finance

Section 2. Exhibit A, which is attached and incorporated by reference, is the Certification by the AURA Recording Secretary of the signatures authorized by this resolution.

Section 3. This resolution revokes and supersedes all prior signature authority as to: (1) all drafts, notes, and other negotiable instruments or paper payable to AURA; and (2) checks drawn against funds of AURA on deposit in any bank or savings and loan association. This resolution shall remain irrevocable insofar as any bank is concerned until such bank is notified in writing of the revocation of such authority.

Section 4. This resolution shall be effective upon its approval by the AURA Board of Commissioners and signatures executed by Maureen C. Phair prior to the date of approval of this resolution are ratified and affirmed.

APPROVED AND ADOPTED this 2nd day of February, 2022.

____
Alan K. Parker, Chair

ATTEST:

____
Recording Secretary

APPROVED AS TO FORM:

____
Legal Counsel

EXHIBIT A

Signature Certification

I certify that the following are true and correct signatures of the officials whose signatures are hereinafter subscribed: Alan K. Parker, Chair; Sue E. Dolan, Treasurer; Maureen C. Phair, Executive Director; and Bryan Archer, Director of Finance.

____
Alan K. Parker

____
Sue E. Dolan

____
Maureen C. Phair

____
Bryan Archer

ATTEST:

____
Recording Secretary

ARVADA URBAN RENEWAL AUTHORITY
AGENDA INFORMATION SHEET

Agenda No.: 9.B.

Meeting Date: February 2, 2022

Title: Contract to Buy and Sell Real Estate - 5603 Yukon Street

ACTION PROPOSED: Approve

INFORMATION ABOUT THE ITEM:

AURA is currently renting office space and is considering purchasing an office duplex located at 5603 Yukon Street and relocate AURA's office.

Current Office Situation:
- Rent 2,326 sf, occupy 1,582 sf (balance of square feet is for common areas including bathrooms, hallway, stairs, elevator, lobby)
- Pay $17/sf with $10/sf CAM for an effective rate of $27/sf
- Monthly rent $5,292, annual rent $63,504
- Rent increases $0.50/sf annually
- Lease expires October 2023

5603 Yukon Street – Office Duplex Details:
- $1,175,000 purchase price
- $375,000 approximate cost to remodel AURA's side of duplex
- Approximately 8 months to remodel
- Opportunity to lease other side of duplex – could provide $25 - $30,000 annually in rent revenue
- AURA does not pay property tax but will need to cover utilities, insurance, mowing, cleaning and trash

Due Diligence Information**:** The building was damaged during the hail event of 2017 and received $228,852.30 in repairs and upgrades. See the breakdown of work performed below.

- Phase I Environmental:
  - By Partner Engineering and Science, report dated 2/28/2013
  - The service station located directly to the south removed the underground storage tanks in 1998. The site was remediated between 1998 – 2005 and received a No Further Action (NFA) determination in 2005.
  - Sir Speedy Printing occupied the building for 22 years.
  - Probably contains asbestos.

- Phase II Environmental:
  - By Partner Engineering and Science, dated 3/26/2013
  - Report was commissioned due to the 22 years it operated as a printer which is a Recognized Environmental Condition (REC)
  - Findings:

    Based on the findings of this limited assessment, the reported concentrations of methylene chloride, naphthalene, and 1,2,4-trimethylbenezene in the groundwater sample collected at the subject property are not subject to further investigation or corrective action.

    Since the adjacent property to the south has received regulatory closure, Partner recommends that the temporary monitoring well located on the southeastern portion of the subject property be properly removed and plugged per State of Colorado guidelines.

- Asbestos Abatement:
  - Advanced Environmental LLC
  - Asbestos abatement
  - Invoice dated 5/19/2017
  - $61,200.11

- General Contractor – building repairs and remodel:
  - Advanced Environmental LLC
  - HVAC, electrical, ceiling tile/grid system, flooring
  - Invoice 5/19/2017
  - $94,708.24

- New Roof and Gutters:
  - Quality Roofing
  - Invoice 6/14/2017
  - $51,143.95

- HVAC:
  - B&B Heating
  - Air Conditioning installation – 2 Carrier Comfort 1.5 ton air conditioner, new duct and supply new pipe and spin-ins
  - Invoices 4/27/17 and 1/8/2018
  - $21,800

Inspection:

- Electrical – There are two separately metered units, both are 150A 120/240V single phase. The recent remodel was done professionally and both the lighting and branch power are in excellent condition. There are no visible defects or safety concerns.

- Plumbing and HVAC inspections have been completed but we are waiting for the reports. We will have them by the Board meeting.

COMMUNITY BENEFIT: AURA is purchasing an underutilized building on Yukon St. in Olde Town and will improve and activate the building which has been primarily vacant for the past several years. In addition, the other side of the duplex will be rented which will further activating Yukon.

AURA plans to build a large conference room within the office and allow the public to utilize it for public meetings.

FINANCIAL IMPACT: AURA will need to use $1.75 million of existing cash reserves to purchase the building along with an additional estimated $375,000 to remodel the office. Depending on the tenant, we may need to provide a tenant improvement allowance for the other side of the duplex. The rent from the tenant can be used to offset costs.

The money that AURA has invested is currently earning little to no interest; the money will be invested in an appreciating asset. AURA will be able to see the asset in the future and be able to redeploy the revenue.

STAFF RECOMMENDATION: Staff recommends approval

SUGGESTED MOTION: I move that the contract to purchase 5603 Yukon Street be approved.

RESOLUTION AR-22-02

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE CONTRACT TO BUY AND SELL REAL ESTATE (COMMERCIAL) FOR PROPERTY LOCATED AT 5603 YUKON STREET BETWEEN THE ARVADA URBAN RENEWAL AUTHORITY AS BUYER AND YUKON STREET STUDIOS, LLC AS SELLER

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY, THAT:

Section 1. The Contract to Buy and Sell Real Estate (Commercial) for property located at 5603 Yukon Street (the "Property") between the Arvada Urban Renewal Authority as Buyer and Yukon Street Studios, LLC as Seller, attached hereto as **Exhibit A**, is hereby approved, and the Chairman is authorized to execute the Contract on behalf of the Authority. Both the Chairman and the Executive Director are authorized to execute the necessary documents to accomplish the closing of the Property on behalf of the Arvada Urban Renewal Authority as Buyer.

DATED this 2nd day of February, 2022.

____
Alan Parker, Chair

____
Recording Secretary

APPROVED AS TO FORM

____
Corey Y. Hoffmann, Legal Counsel

RE/MAX Alliance
Mike Papantonakis
Ph: 303-913-9129
Fax: 303-945-3770

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (BC60-6-19) (Mandatory 1-20)

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY, OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-BUY LISTING CONTRACT

☒ **BUYER AGENCY** ☐ **TRANSACTION-BROKERAGE**

Date: *1/26/2022*

1. AGREEMENT. Buyer and Brokerage Firm enter into this exclusive, irrevocable contract (Buyer Listing Contract) and agree to its provisions. Broker, on behalf of Brokerage Firm, agrees to provide brokerage services to Buyer. Brokerage Firm will receive compensation as set forth in this Buyer Listing Contract.

2. BROKER AND BROKERAGE FIRM.

☒ **2.1. Multiple-Person Firm.** If this box is checked, "Broker" (as defined below) is the individual designated by Brokerage Firm to serve as the broker of Buyer and to perform the services for Buyer required by this Buyer Listing Contract. If more than one individual is so designated, then references in this Buyer Listing Contract to Broker includes all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

☐ **2.2. One-Person Firm.** If this box is checked, Broker (as defined below) is a brokerage firm with only one licensed person. References in this Buyer Listing Contract to Broker or Brokerage Firm mean both the licensed person and brokerage firm, who serve as the Broker of Buyer and perform the services for Buyer required by this Buyer Listing Contract.

3. DEFINED TERMS.

3.1. Buyer: *ARVADA URBAN RENEWAL AUTHORITY* and any other person or entity on whose behalf the named party acts, directly or indirectly, to Purchase the Property.

3.2. Brokerage Firm: *RE/MAX Alliance*

3.3. Broker: *Mike Papantonakis*

3.4. Property. Property means real estate which substantially meets the following requirements or is acceptable to Buyer:
5603 Yukon St. Arvada, CO 80002

Buyer(s) Initials ______________________

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3.5. Purchase; Lease.

3.5.1. A "Purchase" of Property means the acquisition of any interest in the Property or the creation of the right to acquire any interest in the Property, including a contract or lease. It also includes an agreement to acquire any ownership interest in an entity that owns the Property.

☐ **3.5.2.** If this box is checked, Buyer authorizes Broker to negotiate a lease of the Property. Lease of the Property or Lease means any agreement between a landlord and the Buyer to create a tenancy or leasehold interest in the Property.

3.6. Listing Period. The Listing Period of this Buyer Listing Contract begins on ***1/26/2022*** , and continues through the earlier of (1) completion of the Purchase of the Property or Lease of the Property or (2) ***3/31/2022*** , and any written extensions (Listing Period). Broker will continue to assist in the completion of any purchase or lease for which compensation is payable to Brokerage Firm under § 7 of this Buyer Listing Contract.

3.7. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the date upon which both parties have signed this Buyer Listing Contract.

3.8. Day; Computation of Period of Days, Deadline.

3.8.1. Day. As used in this Buyer Listing Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

3.8.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified, e.g., three days after MEC, the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday or Holiday. Should neither box be checked, the deadline will not be extended.

4. BROKERAGE RELATIONSHIP.

4.1. If the Buyer Agency box at the top of page 1 is checked, Broker represents Buyer as Buyer's limited agent (Buyer's Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker acts as a Transaction-Broker.

4.2. In-Company Transaction – Different Brokers. When the seller and Buyer in a transaction are working with different brokers within the Brokerage Firm, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Buyer acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a seller.

4.3. In-Company Transaction – One Broker. If the seller and Buyer are both working with the same Broker, Broker will function as:

4.3.1. Buyer's Agent. If the Buyer Agency box at the top of page 1 is checked, the parties agree the following applies:

4.3.1.1. Buyer Agency Unless Brokerage Relationship with Both. Broker represents Buyer as Buyer's Agent and must treat the seller as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. However, if Broker delivers to Buyer a written Change of Status that Broker has a brokerage relationship with the seller then Broker is working with both Buyer and seller as a Transaction Broker. If the box in § 4.3.1.2 (**Buyer Agency Only**) is checked, § 4.3.1.2 (**Buyer Agency Only**) applies instead.

☒ **4.3.1.2. Buyer Agency Only.** If this box is checked, Broker represents Buyer as Buyer's Agent and must treat the seller as a customer. Broker must disclose to such customer Broker's relationship with Buyer.

Buyer(s) Initials ______________________

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4.3.2. Transaction-Broker. If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker must work with Buyer as a Transaction-Broker. A Transaction-Broker must perform the duties described in § 5 and facilitate purchase transactions without being an advocate or agent for either party. If the seller and Buyer are working with the same Broker, Broker must continue to function as a Transaction-Broker.

5. BROKERAGE DUTIES. Brokerage Firm, acting through Broker, as either a Transaction-Broker or a Buyer's Agent, must perform the following **Uniform Duties** when working with Buyer:

5.1. Broker must exercise reasonable skill and care for Buyer, including but not limited to the following:

5.1.1. Performing the terms of any written or oral agreement with Buyer;

5.1.2. Presenting all offers to and from Buyer in a timely manner regardless of whether Buyer is already a party to a contract for the Purchase of Property;

5.1.3. Disclosing to Buyer adverse material facts actually known by Broker;

5.1.4. Advising Buyer regarding the transaction and advising Buyer to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;

5.1.5. Accounting in a timely manner for all money and property received; and

5.1.6. Keeping Buyer fully informed regarding the transaction.

5.2. Broker must not disclose the following information without the informed consent of Buyer:

5.2.1. That Buyer is willing to pay more than the purchase price offered for the Property;

5.2.2. What Buyer's motivating factors are;

5.2.3. That Buyer will agree to financing terms other than those offered; or

5.2.4. Any material information about Buyer unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing.

5.3. Buyer consents to Broker's disclosure of Buyer's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee does not further disclose such information without consent of Buyer, or use such information to the detriment of Buyer.

5.4. Broker may show properties in which Buyer is interested to other prospective buyers without breaching any duty or obligation to Buyer. Broker is not prohibited from showing competing buyers the same property and from assisting competing buyers in attempting to purchase a particular property.

5.5. Broker is not obligated to seek other properties while Buyer is already a party to a contract for the Purchase of Property.

5.6. Broker has no duty to conduct an independent inspection of the Property for the benefit of Buyer and has no duty to independently verify the accuracy or completeness of statements made by a seller or independent inspectors. Broker has no duty to conduct an independent investigation of Buyer's financial condition or to verify the accuracy or completeness of any statement made by Buyer.

5.7. Broker must disclose to any prospective seller all adverse material facts actually known by Broker, including but not limited to adverse material facts concerning Buyer's financial ability to perform the terms of the transaction and whether Buyer intends to occupy the Property as a principal residence.

5.8. Buyer understands that Buyer is not liable for Broker's acts or omissions that have not been approved, directed, or ratified by Buyer.

Buyer(s) Initials ____________________

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175 **6. ADDITIONAL DUTIES OF BUYER'S AGENT.** If the Buyer Agency box at the top of page 1 is checked,
176 Broker is Buyer's Agent, with the following additional duties:
177
178 **6.1.** Promoting the interests of Buyer with the utmost good faith, loyalty and fidelity;
179
180 **6.2.** Seeking a price and terms that are acceptable to Buyer; and
181
182 **6.3.** Counseling Buyer as to any material benefits or risks of a transaction that are actually known by Broker.
183
184
185 **7. COMPENSATION TO BROKERAGE FIRM.** In consideration of the services to be performed by Broker,
186 Brokerage Firm will be paid as set forth in this section, with no discount or allowance for any efforts made by
187 Buyer or any other person. Unless otherwise agreed to in writing, Brokerage Firm is entitled to receive
188 additional compensation, bonuses, and incentives paid by listing brokerage firm or seller. Broker will inform
189 Buyer of the fee to be paid to Brokerage Firm and, if there is a written agreement, Broker will supply a copy
190 to Buyer, upon written request of Buyer.
191
192 **7.1. Brokerage Firm's Fee – Purchase.**
193
194 **Check Compensation Arrangement:**
195
196 ☒ **7.1.1. Success Fee.** Brokerage Firm will be paid as follows:
197
198 **7.1.1.1. Amount.** A fee equal to ***2.8% OR MORE***% of the purchase price, but not less than
199 $***n/a***, except as provided in § 7.1.1.2.
200
201 **7.1.1.2. Adjusted Amount.** ☐ **See § 21 (Additional Provisions) or** ☐ **Other**
202 ***n/a***
203
204 **7.1.1.3. When Earned; When Payable – Purchase.** The Success Fee is earned by
205 Brokerage Firm upon the Purchase of Property and is payable upon closing of the transaction. If any
206 transaction fails to close as a result of the seller's default, with no fault on the part of Buyer, the Success Fee
207 will be waived. If any transaction fails to close as a result of Buyer's default, in whole or in part, the Success
208 Fee will not be waived; such fee is payable upon Buyer's default, but not later than the date that the closing
209 of the transaction was to have occurred.
210
211 ☐ **7.1.2. Hourly Fee.** Brokerage Firm will be paid $***n/a*** per hour for time spent by Broker pursuant
212 to this Buyer Listing Contract, up to a maximum total fee of $***n/a***. This hourly fee is payable to Brokerage
213 Firm upon receipt of an invoice from Brokerage Firm.
214
215 ☐ **7.1.3. Retainer Fee.** Buyer will pay Brokerage Firm a nonrefundable retainer fee of $***n/a*** due and
216 payable upon signing of this Buyer Listing Contract. This amount ☐ **Will** ☐ **Will Not** be credited against
217 other fees payable to Brokerage Firm under this section.
218
219 ☐ **7.1.4. Other Compensation.**
220 ***n/a***
221
222 **7.2. Brokerage Firm's Fee – Lease.** If the box in § 3.5.2 is checked, Brokerage Firm will be paid a
223 fee as follows, less any amounts paid by the listing brokerage firm or landlord:
224
225 **7.2.1. Amount.** $***n/a*** per square ***n/a*** , or ***n/a*** , except as provided in § 7.2.2.
226
227 **7.2.2. Adjusted Amount.** ☐ **See § 21 (Additional Provisions) or** ☐ **Other** ***n/a***.
228
229 **7.2.3. Other.** ***n/a***.
230
231 **7.2.4. When Earned; When Payable – Lease.** This Lease fee is earned upon the mutual
232 execution of the Lease. One-half of this Lease fee is payable upon mutual execution of the Lease and
one-half upon possession of the premises by tenant or as follows: ***n/a***. If the Lease, executed after the date

Buyer(s) Initials ____________________

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of this Buyer Listing Contract, contains an option to extend or renew, or if Buyer expands into additional space within the building or complex where the Property is located, Brokerage Firm ☐ **Will** ☐ **Will Not** be paid a fee upon exercise of such extension or renewal option or expansion. If Brokerage Firm is to be paid a fee for such extension, renewal or expansion, the amount of such fee and its payment are as follows: ***n/a***.

7.3. Who Will Pay Brokerage Firm's Success Fee.

☐ **7.3.1. Listing Brokerage Firm or Seller May Pay. Buyer IS Obligated to Pay.** Broker is authorized and instructed to request payment of Brokerage Firm's Success Fee from the listing brokerage firm or seller. Buyer is obligated to pay any portion of Brokerage Firm's Success Fee which is not paid by the listing brokerage firm or seller.

☐ **7.3.2. Buyer Will Pay.** Buyer is obligated to pay Brokerage Firm's Success Fee. Brokerage Firm is NOT entitled to receive additional compensation, bonuses or incentives from listing brokerage firm, seller or any other source.

☒ **7.3.3. Listing Brokerage Firm or Seller May Pay. Buyer is NOT Obligated to Pay.** Broker is authorized to obtain payment of Brokerage Firm's Success Fee from the listing brokerage firm or seller. Provided Buyer has fulfilled Buyer's obligations in this Buyer Listing Contract, Buyer is not obligated to pay Brokerage Firm's Success Fee.

If no box is checked above, then § 7.3.3 (**Buyer is NOT Obligated to Pay**) will apply.

7.4. Holdover Period. Brokerage Firm's Success Fee applies to Property contracted for (or leased if § 3.5.2 is checked) during the Listing Period of this Buyer Listing Contract or any extensions and also applies to Property contracted for or leased within ***n/a*** calendar days after the Listing Period expires (Holdover Period) (1) if the Property is one on which Broker negotiated and (2) if Broker submitted its address or other description in writing to Buyer during the Listing Period (Submitted Property). Provided, however, Buyer ☐ **Will** ☐ **Will Not** owe the Brokerage Firm's Success Fee under §§ 7.1, 7.2, 7.3.1 and 7.3.2 as indicated, if a commission is earned by another brokerage firm acting pursuant to an exclusive agreement with Buyer entered into during the Holdover Period, and a Purchase or Lease of the Submitted Property is consummated. If no box is checked in this § 7.4, then Buyer does not owe the Brokerage Firm's Success Fee to Brokerage Firm.

8. LIMITATION ON THIRD-PARTY COMPENSATION. Neither Broker nor Brokerage Firm, except as set forth in § 7, will accept compensation from any other person or entity in connection with the Property without the written consent of Buyer. Additionally, neither Broker nor Brokerage Firm is permitted to assess and receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Buyer signs a separate written consent for such services.

9. BUYER'S OBLIGATIONS TO BROKER. Buyer agrees to conduct all negotiations for the Property only through Broker, and to refer to Broker all communications received in any form from brokers, prospective sellers, or any other source during the Term of this Buyer Listing Contract. Buyer represents that Buyer ☐ **Is** ☒ **Is Not** currently a party to any agreement with any other broker to represent or assist Buyer in the location or Purchase of Property. Buyer further represents that Buyer ☐ **Has** ☒ **Has Not** received a list of any "Submitted Property" pursuant to a previous listing agreement to purchase Property with any other broker.

10. RIGHT OF PARTIES TO CANCEL.

10.1. Right of Buyer to Cancel. In the event Broker defaults under this Buyer Listing Contract, Buyer has the right to cancel this Buyer Listing Contract, including all rights of Brokerage Firm to any compensation if the Buyer Agency box at the top of page 1 is checked. Examples of a Broker breach include, but are not limited to (1) abandonment of Buyer, (2) failure to fulfill all material obligations of Broker and (3) failure to fulfill all material Uniform Duties (§ 5) or, if the Buyer Agency box at the top of page 1 is checked, the failure

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to fulfill all material Additional Duties of Buyer's Agent (§ 6). Any rights of Buyer that accrued prior to cancellation will survive such cancellation.

10.2. Right of Broker to Cancel. Brokerage Firm may cancel this Buyer Listing Contract upon written notice to Buyer if Buyer fails to reasonably cooperate with Broker or Buyer defaults under this Buyer Listing Contract. Any rights of Brokerage Firm that accrued prior to cancellation will survive such cancellation.

11. COST OF SERVICES OR PRODUCTS OBTAINED FROM OUTSIDE SOURCES. Broker will not obtain or order products or services from outside sources unless Buyer has agreed to pay for them promptly when due (e.g., surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Neither Broker nor Brokerage Firm is obligated to advance funds for Buyer. Buyer must reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Buyer.

12. BROKERAGE SERVICES; SHOWING PROPERTIES.

12.1. Brokerage Services. The following additional tasks will be performed by Broker:
n/a

12.2. Showing Properties. Buyer acknowledges that Broker has explained the possible methods used by listing brokers and sellers to show properties, and the limitations (if any) on Buyer and Broker being able to access properties due to such methods. Broker's limitations on accessing properties are as follows: ***NONE***.
Broker, through Brokerage Firm, has access to the following multiple listing services and property information services:
CoStar commercial property exchange, Loopnet, REColorado MLS.

13. DISCLOSURE OF BUYER'S IDENTITY. Broker ☒ **Does** ☐ **Does Not** have Buyer's permission to disclose Buyer's identity to third parties without prior written consent of Buyer.

14. DISCLOSURE OF SETTLEMENT SERVICE COSTS. Buyer acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors and title companies).

15. WIRE AND OTHER FRAUDS. Wire and other frauds occur in real estate transactions. Any time Buyer is supplying confidential information such as social security numbers or bank account numbers, Buyer should provide the information in person or in another secure manner.

16. REMOVAL OF MARKETING MATERIAL. Buyer acknowledges that marketing material used by the seller and the seller's broker (e.g.: videos, photos, etc.) may be difficult, if not impossible, to remove from syndicators and the Internet and releases Broker from any liability for Broker's inability to remove the information.

17. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective seller because of their inclusion in a "protected class" as defined by federal, state or local law. "Protected classes" include, but are not limited to, race, creed, color, sex, sexual orientation, gender identity, marital status, familial status, physical or mental disability, handicap, religion, national origin, or ancestry of such person.

18. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Buyer acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this Buyer Listing Contract.

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19. MEDIATION. If a dispute arises relating to this Buyer Listing Contract, prior to or after closing, and is not resolved, the parties must first proceed in good faith to submit the matter to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree, in writing, before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, will terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the other party's last known address.

20. ATTORNEY FEES. In the event of any arbitration or litigation relating to this Buyer Listing Contract, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

21. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)
n/a

22. ATTACHMENTS. The following are a part of this Buyer Listing Contract:
n/a

23. NOTICE, DELIVERY AND CHOICE OF LAW.

23.1. Physical Delivery and Notice. Any document or notice to Brokerage Firm or Buyer must be in writing, except as provided in § 23.2 and is effective when physically received by such party, or any individual named in this Buyer Listing Contract to receive documents or notices for such party.

23.2. Electronic Notice. As an alternative to physical delivery, any notice, may be delivered in electronic form to Brokerage Firm or Buyer, or any individual named in this Buyer Listing Contract to receive documents or notices for such party at the electronic address of the recipient by facsimile, email or ***Internet***.

23.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

23.4. Choice of Law. This Buyer Listing Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the State of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

24. MODIFICATION OF THIS CONTRACT. No subsequent modification of any of the terms of this Buyer Listing Contract is valid, binding upon the parties, or enforceable unless in writing and signed by the parties.

25. COUNTERPARTS. This Buyer Listing Contract may be executed by each of the parties, separately, and when so executed by all the parties, such copies taken together are deemed to be a full and complete contract between the parties.

26. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties and any prior agreements, whether oral or written, have been merged and integrated into this Buyer Listing Contract.

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408 **27. COPY OF CONTRACT.** Buyer acknowledges receipt of a copy of this Buyer Listing Contract signed by
409 Broker, including all attachments.
410
411
412 **28. MEGAN'S LAW.** If the presence of a registered sex offender is a matter of concern to Buyer, Buyer
413 understands that Buyer must contact local law enforcement officials regarding obtaining such information.
414
415
416 Brokerage Firm authorizes Broker to execute this Buyer Listing Contract on behalf of Brokerage Firm.
417
418
419
420 ______________________________ Date: ____________
421
422 Buyer: ***ARVADA URBAN RENEWAL AUTHORITY***
423 ***By: Alan K Parker, Chairman of the Board of Commisioners***
424
425
426
427
428
429
430 ______________________________ Date: ***1/26/2022***
431
432 Broker: ***Mike Papantonakis***
433 Brokerage Firm's Name: ***RE/MAX Alliance***
434 Address: ***7425 W. Grandview Ave. Arvada, CO 80002***
435 Ph: ***303-913-9129*** Fax: ***303-945-3770*** Electronic Address: ***mikep1@remax.net***
436
437 **No. BC60-6-19. EXCLUSIVE RIGHT-TO-BUY LISTING CONTRACT**

Buyer(s) Initials ______________________

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ARVADA URBAN RENEWAL AUTHORITY
AGENDA INFORMATION SHEET

Agenda No.: 9.C.

Meeting Date: February 2, 2022

Title: SAR - AURA Office Interior Design and Architectural Services Proposal

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ACTION PROPOSED: Approve

INFORMATION ABOUT THE ITEM: AURA is purchasing an office duplex located at 5603 Yukon Street and will need to remodel the space prior to moving our offices. We received a proposal for Interior Design and Architectural Services from SAR.

SAR has a long and good working relationship with AURA. They are the architect and site planner for Loftus, George Thorn, and are involved with the Paseo. We reached out to their interior design department to assist with the design of our new office space.

SAR Proposal:

Item	Amount
Concept Design	$ 4,850
Design	12,475
Documentation	16,000
Total Design	$33,325
Permitting and Bidding	$ 2,000
Construction Contract Administration	8,425
Total Construction Management	$10,425
Total	$43,750

Design and architectural services typically run around ten percent of the cost of construction. We have a rough estimate that our tenant improvement might be in the vicinity of $375,000. SAR's design fees are $33,325, which falls beneath that ten percent benchmark. If we choose to use them for permitting, bidding and construction contact administration, it is an addition $10,425. We worked with SAR to reduce the proposal by $3,750.

FINANCIAL IMPACT: AURA has the financial resource available to pay for these services.

STAFF RECOMMENDATION: Staff recommends approval

SUGGESTED MOTION: I move that SAR's proposal for Office Interior Design and Architectural Services be approved.

January 24, 2022

Maureen Phair
Arvada Urban Renewal Authority
5601 Olde Wadsworth Blvd., Suite 210
Arvada CO, 80002

AURA Offices

Interior Design & Architectural Services Proposal

We are pleased to present this proposal for your new offices at 5603 Yukon Street. This proposal describes scope of work and anticipated timeline. We are excited about the opportunity to develop the interior and exterior façade refresh on this project and look forward to working together throughout this process.

Scope of Work

The following outlines our understanding of the scope of work based on our conversations with you regarding program and vision. Areas included in the scope are assumed to be:

Your Suite

- Demo Plan
- Reception Area
- 2 Private Offices
- Kitchenette and Work Room
- Community Conference Room
- 2 ADA Restrooms
- Façade Updates
- Accessible Ramp
- Updated Landscaping

Leasable Suite

- Demo plan for existing finishes
- Potentially updated Accessible Restroom

Design Services

Concept Design

This phase establishes the scope, design concept, and preliminary space planning for the project.

- Meet with owners to confirm program requirements and establish a preliminary budget.
- Develop preliminary space plans – see attached for some options based on our initial walk and your feedback
- Onboard MEP Consultant

- Develop preliminary look & feel palettes.
- Present and provide a conceptual look-book that begins to define the "story" of the space through imagery, plans & diagrams.
- Provide a narrative to the GC for pricing efforts, if requested.

Design
This phase includes further development of the design concept, engagement & coordination with technical consultants.

- 2 progress meetings
  - 50% to review the development of the plans, RCPs, elevations & graphics to visually describe the concept
  - 90% to review final plans, 3D views, interior finishes & equipment.

Documentation
This phase is the final documentation & detailing for all spaces in the scope of work.
- Finalize plans, RCPs, details and elevations.
- Finalize finish, appliance & accessory schedules.
- Coordinate with mechanical, electrical and plumbing.
- Review the contractor provided pricing in accordance with the owner's budget.
- Meet with the team to address concerns, solicit contractor input, direct the detailed coordination between trades and address critical design elements.
- Meet with owner to review final selections.
- Incorporate recommendations from all consultants into final design, including acoustic, accessibility, etc.

Permitting and Bidding
- Participate in client review of pricing of construction documents.
- Assemble documents and transit to General Contractor for use in obtaining competitive bids.
- Aid in the review of bids and selection of contractors as needed.
- Clarify questions to construction documents as requested by contractor or subcontractors.
- Respond to city comments.
- Resubmittal documents as required to address any comments from building department generated by permit review.

Construction Contract Administration
This phase includes clarifications for the contractor of the interior scope, review of submittals & shop drawings and site meetings.

- Visit the site at critical construction milestones, as determined by architect, a maximum of (5) visits, to become generally familiar with the progress and quality of the portion of

work completed, and to determine, in general, if the work observed is being performed in accordance with the contract documents.
- Review and respond to Requests for Interpretation.
- Review and shop drawings, submittals, and samples.
- Visit the site (1) additional time at substantial completion to prepare a punch list.

FF&E Scope of Work

We understand that several furniture pieces will be reused from the current office. If it becomes necessary as the project develops, we can assist in the selection of furniture pieces and support you to source these through a furniture dealer (conference room table, lounge furniture, etc).

Scope Exclusions

Note that while these tasks and deliverables are not included in the design services, many of these items may be added for additional cost and schedule allowances, if requested.

- Mechanical, Electrical, Plumbing and Structural design, documentation, and fees.
- Deliverables not specifically indicated within design services listed above.
- Construction cost estimates. The team will assist owner and contractor by providing documentation to allow for quantity takeoffs.
- Materials such as graphic illustrations, renderings, or data needed for the marketing of the lease, rental, or scale of the developed project.
- Physical 3D models.
- Permit expediting services.
- All development fees associated with entitlement, plan review, and permit.
- Revised design, if necessary, resulting from owner-initiated project delays or stoppages (e.g. changes in regulatory requirements).
- Review of and response to design and underwriting inquiries prepared by financial institutions, equity partners, and lenders.
- Revit or BIM modeling beyond the scope listed above.
- Record or As-built drawings.
- Comprehensive Signage Plans or other as required by AHJ.
- Fire alarm/protection graphics for the Fire Department.
- Photorealistic renderings.
- Lighting consultant.
- Physical material/finish boards
- Signage

FF&E Scope Exclusions

- Signage (both code and finish, exterior and interior)
- A/V equipment
- Office equipment (e.g. printers)
- Office or Kitchen supplies
- Accessories and Art
- Rooms/areas not explicitly described in ‘Scope of Work’ listed above

Design Schedule

We estimate that a project of this scope and scale will be a 12 week design scheduled followed by construction. Before SAR+ commences, we will work with the 'Owner' and GC (if appliable) to identify milestones and commit as a team to achieve them.

Concept	1 weeks
Design	2 weeks
Documentation	5 weeks
Permit	4 weeks
Bidding	2 weeks (concurrent with Permit Effort)
Construction Estimate	*12-16 weeks (GC to confirm)*
Total	18 weeks (4-5 months)

Fees and Expenses

Proposed Compensation

Design fees for the design services described above will be for a lump sum of $ 43,750 and will invoiced monthly based on the percentage complete and are due within 30 calendar days. The fees breakdown as follows:

Concept Design	$ 4,850
Design	$ 12,475
Documentation	$ 16,000
Permitting and Bidding	$ 2,000
Construction Contract Administration*	$ 8,425
Total	$ 43,750
FF&E Specification, Hourly	$ TBD

*This is an estimated cost of the Construction Contract Administration Phase of the project and will be billed on an hourly basis. It is unlikely that in our experience that a project of this size and scale will exceed this fee but due to current climate, availability of goods and materials, reselections may need to be made and increase time spent.

Reimbursable Expenses

All reimbursable expenses shall be invoiced at 1.10x the actual expense. These include: Printing, plotting, duplication, photo reprographics, large format scanning, photography, model and material supplies, shipping, courier, postage, and travel expenses.

Additional Services
Additional services include any work outside the scope of services indicated in this proposal. These services will be provided, with your prior approval, on an hourly basis at the following rates:

Principal/Partner	$ 250.00
Project Manager/Project Design:	$ 175.00
Project Architect:	$ 165.00
Lead Interior Designer:	$ 135.00
Interior Designer:	$ 120.00
Administrative:	$ 100.00

This proposal is based upon initial information as furnished by owner and as outlined below. If at any time the program changes significantly (that is, an increase of more than 10% of gross square footage or 10% of construction cost; or substantial changes to use, occupancy, or construction type), this proposal will no longer be valid in this form. In this eventuality, architect will pause work (with reasonable notice and after notifying owner), evaluate potential impacts to scope and schedule, and issue a revised proposal (if warranted) before proceeding again with the work.

Terms and Conditions

We truly appreciate this opportunity and hope this proposal is sufficient for your purposes. If the terms of this agreement are acceptable, please sign below and return one copy to our office. We look forward to working with you and are ready to begin immediately.

Sincerely,

Andre Baros, Senior Associate

Kristen Rutledge, Associate

Accepted:

Signature   Date

ARVADA URBAN RENEWAL AUTHORITY
AGENDA INFORMATION SHEET

Agenda No.: 9.D.

Meeting Date: February 2, 2022

Title: Loan Agreement between City of Arvada and AURA

ACTION PROPOSED: Approve

INFORMATION ABOUT THE ITEM: AURA is requesting a short term loan from the City of Arvada for $8,000,000.

The Ralston Fields Urban Renewal Area expires in 2028 and AURA is looking to complete several exciting projects in the next few years. Some of these projects include:

- Ralston Commons (NW corner of Ralston Rd and Garrison St) – mixed-use development with 27 for sale townhomes, 186 apartments, two restaurant buildings built around a large active park with parking for food trucks.
- Berkeley Homes (former Safeway) – 47 for-sale townhomes
- Paseo – 55' parkway linking Ralston Road with 57th Street along the 55' Garrison ROW. The project will extend the community garden into the parkway; create public viewing to the mountains and into the gardens, and increase safety and usage through lighting and design.
- Redevelopment of Kmart into a mixed-use development with 348 apartment units with 5% affordable and 10,000 s.f. of commercial.
- Ralston Gardens (former City Stores site) – 102 affordable housing units
- Paseo Place Apartments (57th & Garrison) – 36 apartment with 5% affordable

The Ralston Field's Fund is projected to have $21 million by 2028 with the final few years producing the highest revenue. In order to financially support these projects and allow them to move forward in the next couple years, AURA needs to borrow against the future revenue. Below is Ralston Field's projected fund balance.

2021	2022	2023	2024	2025	2026	2027	2028
4,701,754	3,402,834	2,446,727	5,137,711	7,983,689	14,187,264	20,414,017	21,314,214

AURA is requesting the following loan terms with the City of Arvada, an $8 million loan at 3% interest paid over three years.

Loan Proceeds:
2022 $8,000,000

Payment Schedule:

2023	$2,000,000
2024	3,000,000
2025	3,530,000
	$8,530,000

In order to minimize the impact to the City's cash balance, we are proposing a three year payback. We have also worked with Vectra Bank to secure a tax exempt loan, also at 3% interest, as a backup plan in case the City has need of those funds prior to the loan payback.

AURA and the City have a successful history of working together financially, including:

- $2 million loan to AURA to buy Brooklyn's - now the Hilton Garden Inn
- $5 million loan to AURA buy Arvada Square - soon to be Ralston Commons
- $3.5 million grant to City to finance the Ralston Road streetscape improvements
- $1 million loan to City – Covid small business grant
- $450,000 grant to the City to finance the historic trolley platform

COMMUNITY BENEFIT: With the loan from the City, AURA will be able to fast track the remediation of blight by working with the development community to construct a variety of mixed-use projects. Specifically there will be 74 for-sale townhomes, 672 apartment homes, 119 of which are affordable, and 15,000 square feet of retail/commercial space. In addition, there will be new streetscapes with tree lined streets, pocket parks, urban plaza, and a vertical park linking neighborhoods.

FINANCIAL IMPACT: AURA will receive $8 million from the City to assist with the urban renewal projects listed above. AURA will have the financial resources from future sales and property tax TIF to repay the loan in the terms outlined. The cost of the loan at 3% interest over three years is $530,000.

STAFF RECOMMENDATION: Staff recommends approval

SUGGESTED MOTION: I move that the loan between the City of Arvada and AURA be approved.

RESOLUTION AR-22-03

A RESOLUTION OF THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY APPROVING THE LOAN AGREEMENT BETWEEN THE CITY OF ARVADA AND THE ARVADA URBAN RENEWAL AUTHORITY

NOW THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE ARVADA URBAN RENEWAL AUTHORITY, THAT:

Section 1. The Loan Agreement between the City of Arvada and the Arvada Urban Renewal Authority, attached hereto as **Exhibit A**, is hereby approved, and the Chairman is authorized to execute the Loan Agreement on behalf of the Authority.

DATED this 2nd day of February, 2022.

____
Alan Parker, Chair

____
Recording Secretary

APPROVED AS TO FORM

____
Corey Y. Hoffmann, Legal Counsel

Exhibit A

Loan Agreement

A. **Parties**. The parties to this Loan Agreement ("Agreement") are the City of Arvada, a home rule municipal corporation ("Lender" or "City") and the Arvada Urban Renewal Authority, a body corporate and politic of the State of Colorado ("Borrower" or "AURA").

B. **Purpose**. Borrower is responsible for revitalizing urban areas designated throughout the community by creating successful, high-quality projects that will help produce a vibrant cohesive city and enhance the quality of life for the citizens for Arvada. Borrower is an independent body, corporate and politic under the State of Colorado law and governed by a seven member volunteer board appointed by the Mayor of Arvada and approved by the City Council. The Ralston Fields Urban Renewal Area expires in 2028 and Borrower is looking to complete several projects in the remaining years. The Ralston Field's Fund is projected to have $21 million by 2028 with the final few years producing the highest revenue. In order for Borrower to support these projects and allow them to move forward, Borrower needs to borrow against the future revenue of the Ralston Field's projects. To ensure the completion of the remaining projects, the Lender agrees to loan Borrower $8 million dollars.

C. **The City's obligations**. Lender agrees that, subject to Borrower's agreement to and compliance with the terms of this Agreement, Lender will loan the amount of $8 million dollars to Borrower to allow Borrower to complete the remaining Ralston Fields Urban Renewal Area projects as described in Borrower's memo to the City, attached as "Exhibit A".

1. Upon final execution and delivery of this Agreement by both parties, the City shall deliver funds for deposit with Wells Fargo Bank, or such other similar financial institution as the Borrower may direct ("the Bank"), in the amount of $8 million dollars ("Loan"). The City shall remit the Loan into the custody of the Bank by March 18, 2022.

2. The City's obligations described herein shall at all times be conditioned upon the Borrower using the funds solely for the aforementioned purpose. If at any time the Loan is not required to finish the projects, Borrower shall notify the City in writing within five business days of determining the Loan is not required. This Agreement may thereafter be terminated by the City, and Borrower shall repay the Loan to the City within five business days of the termination date.

D. **Borrower' Obligations**. In consideration of the City providing the Loan for the purposes described herein, Borrower agrees to the following terms and conditions, and shall perform, or have performed certain actions as may be necessary under this Agreement.

1. Borrower understands and agrees that the funds described herein are a loan and not a grant. Borrower understands and agrees that the Loan is to be repaid in full, including all principal, and interest if any, as provided herein. The principal of the Loan shall be $8 million dollars. The principal balance ($8 million) shall thereafter bear interest at the rate of 3.0% simple annual interest over a period of

three years commencing March 18, 2022 and continuing through March 18, 2025. Annual payments of principal and interest in the amounts set forth in Exhibit B shall be made to the City of Arvada, for the benefit of Lender. Borrower will make three payments until the Loan is paid in full: $2 million by March 18, 2023; $3 million by March 18, 2024, and $3,530,000 or balance remaining by March 18, 2025. The parties understand and agree that the term of the Loan shall commence on March 18, 2022 and continue until March 18, 2025.

2. Borrower shall utilize any available source of revenue to repay the balance of the Loan. In the event Borrower shall for any reason fail to make a payment when due, Lender shall have the right to receive from the Borrower, any revenues or reserves held by the City of Arvada for the benefit of the Borrower's enterprise in payment of the Loan, or any portion of it currently owed, but not paid. Until repayment of Loan in full, Borrower hereby consents to, and assigns to Lender, upon demand, all right title and interest to all accounts, inventories, receipts, and revenue due to, or held by, or held for the benefit of Borrower.

3. The parties may extend the term of the Loan on an annual basis for up to four additional one year terms, (hereafter, each being an “Extended Term”). Any Extended Term shall be agreed upon in writing not less than 30 calendar days prior to the date of expiration of the Original Term, or the anniversary date of each succeeding Extended Term, as the case may be. At the end of the final Extended Term, if not terminated earlier, Borrower shall remit payment in full to the City without demand not later than five business days after the expiration of the then current Extended Term.

4. Borrower shall be responsible for payment of all costs or expenses associated with obtaining and maintaining the Loan. Such costs or expenses shall not be debited to the Loan. The Loan may not be pledged for security of any other loan, debt, expense or obligation of Borrower, or otherwise be expended or hypothecated by Borrower for any other purpose whatsoever.

5. Borrower expressly acknowledges and agrees that the Loan is authorized by the City solely to facilitate the completion of the Ralston Fields projects. It is not the intention of the parties that the Loan be used to fund any other operation or undertaking of Borrower. Use of the Loan for any other purpose without the express written consent of the City, which consent may be granted or withheld in the sole and exclusive discretion of the City, shall be a breach of this Agreement.

6. In the event of breach of this Agreement by Borrower, the City shall have the right to terminate this Agreement and the repayment of the Loan shall become due and payable in full immediately, and without demand by the City. Any portion of the Loan not repaid in full when due, shall bear interest at the rate of 8% per annum, compounded annually, until paid in full.

7. Borrower shall at all times make all records, ledgers, books, accounts or other documents, concerning the Loan or its balance in any medium, kept or maintained by Borrower available for the City’s inspection at reasonable times

upon request by the City. Borrower shall cooperate with the City, and provide permission to the Bank if required by the Bank, for City access to all account information necessary concerning the Loan for the purpose of verifying any information provided to the City by Borrower related to the Loan.

8. By entering into this Agreement, Lender expressly does not assume any obligation of Borrower to any third party, including, but not by limitation, any term, condition, covenant, duty, or obligation set forth in any contract, certificates of participation, commercial loan, or any other debt or obligation of Borrower to which Lender has not expressly consented in writing.

E. **Additional Documents or Actions**. The parties agree to execute any additional documents or take any additional action that is reasonably necessary to carry out this Agreement.

F. **Assignment.** This Agreement shall not be assigned by Borrower without the prior written consent of Lender, which may be granted or denied in Lender's absolute discretion. Borrower may not hypothecate, lend, or otherwise pledge the proceeds of the Loan to any other lender for any purpose, including, but not by limitation, as collateral for Borrower's performance under any other contract or financial obligation without the consent of Lender.

G. **Binding Effect**. This Agreement shall inure to the benefit of, and be binding upon, the parties, their respective legal representatives, successors, heirs, and assigns; provided however, that nothing in this Section shall be construed to permit the assignment of this Agreement except as otherwise expressly authored herein.

H. **Exhibits.** All Exhibits referred to in this Agreement are, by reference, incorporated herein for all purposes.

I. **Supersedes**. This Agreement supersedes and replaces all prior agreements, written or oral, with respect to the Loan.

J. **Governing Law and Venue**. This Agreement shall be governed by the laws of the State of Colorado without reference to its conflict of laws principles. Venue for any action arising under this Agreement or for the enforcement of this Agreement shall be in the appropriate court for Jefferson County, Colorado.

K. **The City Not a Partner**. The parties understand and agree that by making the Loan, the City is not a guarantor of Borrowers performance, or is assuming any debt or obligation of Borrower, or is creating a partnership or joint venture with Borrower. Nothing herein shall be deemed to be, or be construed as, a guarantee by the City of any debt or obligation of Borrower. Borrower shall not make any representation on behalf of the City, except as expressly authorized.

L. **No Third Party Beneficiaries**. There are no intended or unintended third party beneficiaries to this Agreement. The City acknowledges the Loan may be used in accordance with the terms of the LOC, but nothing herein shall provide any third party any benefit or right under this Agreement. Any person seeking payment from the proceeds of the

Loan shall be deemed incidental to this Agreement, and nothing herein shall be deemed to provide any right of, or claim to, payment, or to otherwise create any action for recovery of any debt or obligation, or obligation of performance against the City under or arising from any Borrower agreement with any third party.

M. **Attorneys' Fees**. If any party breaches this Agreement, the breaching party shall pay all of the prevailing party's reasonable attorney's fees and costs in enforcing this Agreement.

N. **Wavier of Breach**. A waiver by any party to this Agreement of the breach of any term or provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach by either party.

O. **Termination of Agreement**. This Agreement shall automatically terminate upon payment of the Loan. The Lender may extend the term of this Agreement for such reasonable period of time it may believe is reasonable to do so in order to allow cure to occur in the event of default or non-payment by Borrower. Termination of this Agreement shall not otherwise relieve Borrower of any obligation of repayment any funds advanced or loaned by the City for any purpose described herein.

Agreed to this _______ day of _______________, 2022.

Remainder of this page left blank intentionally.

Exhibit A

Signature Page for AURA Loan Agreement

For Borrower:
Arvada Urban Renewal Authority

By: ______________________________________
Name: Alan K. Parker
Title: Chairman

For Lender:
City of Arvada

By: ______________________________________
Name: Marc Williams
Title: Mayor

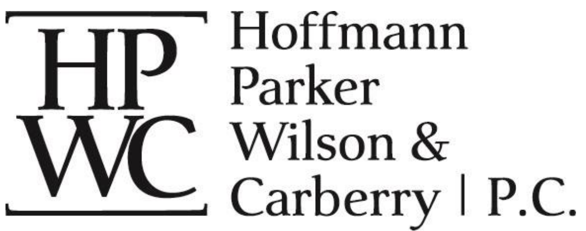
ATTEST:

____
City Clerk

APPROVED AS TO FORM:

Rachel A. Morris, City Attorney

By:
____



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ARVADA URBAN RENEWAL AUTHORITY
MEMORANDUM

TO: **BOARD OF COMMISSIONERS/ ARVADA URBAN RENEWAL AUTHORITY MAUREEN PHAIR, EXECUTIVE DIRECTOR**

FROM: **COREY Y. HOFFMANN, ESQ. AUSTIN P. FLANAGAN, ESQ.**

DATE: **JANUARY 27, 2022**

RE: **SUMMARY OF *AURORA URBAN RENEWAL AUTHORITY V. KAISER***

On January 6, 2022, the Colorado Court of Appeals (the "Court") issued a very significant case involving the allocation of property tax revenues between "base" and "increment" under the Assessors' Reference Library (the "ARL"). In *Aurora Urban Renewal Authority v. Kaiser,* 2022 WL 67850 (Colo. App. 2022) [copy attached], the Court reversed the decision of the Arapahoe County District Court in several significant parts and found in favor of the Plaintiffs including the Aurora Urban Renewal Authority ("AURA"). This memorandum summarizes the opinion with particular focus on the methodology for the allocation of Tax Increment Financing ("TIF").

Ultimately, the Court's decision reversed the lower court and found (a) that all plaintiffs (AURA, three metropolitan districts, and a private developer) had standing to sue, and (b) that the current TIF allocation methodology in the ARL allowing assessors to attribute "indirect benefits" proportionally to base and increment is impermissible. *Id*. This decision has the effect of increasing the increment, which results in more TIF revenue to urban renewal authorities than would have been provided under the impermissible methodology in the ARL.

While it is unclear how the Jefferson County Assessor may have attributed "indirect benefits" proportionally to the base and the increment in Arvada, the case is nonetheless helpful

and can only have a positive impact for the Arvada Urban Renewal Authority in terms of allocation between base and increment.

Relevant Facts

The case concerns the appropriate method of calculating increment under Colorado's Urban Renewal Law (the "URL" or the "Statute"), C.R.S. § 31-25-101, *et seq*. Importantly, the Statute does not specify precisely how county assessors should calculate base and increment values. Instead, the Statute delegates such authority to the Colorado Property Tax Administrator (the "Administrator"), who is responsible for creating manuals that further explain the "manner and methods" of TIF calculations. C.R.S. § 31-25-107(9)(h). The Administrator has done so in Volume 2 of the Administrative and Assessment Procedures Manual in the Assessors' Reference Library, known as the ARL.

The ARL requires, in part, that direct and indirect changes to an Urban Renewal Area ("URA") be allocated differently. Specifically, it requires that "indirect benefits resulting from market perceptions that properties located in a TIF plan are more or less desirable/valuable… apply proportionately to both the base and increment." ARL at 12-15. The allocation methodology in the ARL (but not the allocation procedures challenged in the present matter) was last revised in October 2016, when the State Board of Equalization held a public hearing on such revisions.

AURA, Corporex Colorado LLC ("Corporex" – a private development company), and three metro districts (collectively, "Plaintiffs") sued the Arapahoe County Assessor (the "Assessor") and Administrator, alleging that the ARL's apportionment methodology violates the URL.

The Court of Appeals ruling which largely reversed the decision of the Arapahoe County District Court is summarized in detail below.

All of the Plaintiffs Have Standing

The Court found that all of the Plaintiffs have constitutional standing because the decrease in TIF revenue directly harms them (i.e., fulfills the injury-in-fact requirement of constitutional standing) and that the parties are in the class of entities expressly acknowledged by the URL (i.e., fulfills the legally protected interest requirement of constitutional standing). *Id*. at *4.

Likewise, the Court found that AURA and the metro districts have prudential standing (which, generally requires plaintiffs to raise claims based on individual, as opposed to generalized grievances). *Id*. at *5. A limitation on prudential standing, referred to as the political subdivision standing doctrine, precludes standing when: 1) the agency seeking judicial review is subordinate to the agency whose decision is sought to be reviewed, and 2) no statutory or constitutional provision confers a right on the subordinate agency to seek judicial review of the superior agency's decision. *See City of Greenwood Village v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000). The Court found the prudential standing limitation did not apply because

the metro districts are not inferior governmental agents of the Administrator, and the AURA is not a subordinate agency to the Administrator or the Assessor. *Kaiser*, 2022 WL 67850, at *6.

Having met the constitutional standing requirements and with no applicable standing preclusion, the Court found that all parties have standing to sue, reversing the district court. This is of course very significant to the extent that urban renewal authorities may want to challenge an Assessor's allocation between base and increment in the future or any other aspect of the ARL involving urban renewal law. This ruling indicates that there is legal recourse in such a situation even after considerable time has passed after a new provision has been adopted.

No Requirement to Appeal the 2016 Revisions to the ARL

The allocation methodology in the ARL was last revised in October 2016, when the State Board of Equalization held a public hearing on such revisions. Even though the Plaintiffs did not seek judicial review of that action, the Court found that the failure to exhaust administrative remedies was not fatal to their claims because the underlying matter was likely not at issue in the October 2016 proceeding, and the claim presents a question of law and thus was not appropriate for an administrative remedy, affirming the district court. *Id*. at *7. Again, this is very significant because this ruling indicates that there is legal recourse in a situation where urban renewal authorities may want to challenge an urban renewal related provision of the ARL.

The ARL's Distinction between Direct and Indirect Benefits is Contrary to Law

The current version of the ARL (which was found impermissible by the Court) distinguishes between direct and indirect benefits attributable to property being subject to an urban renewal plan. Direct benefits are those directly attributable to the redevelopment of an urban renewal area (such as actual physical redevelopment activity and construction). Direct benefits do not increase the base value and are solely allocated to the increment. This results in a greater increment and greater TIF revenue payable to urban renewal authorities. Indirect benefits result from "market perceptions that properties located in a TIF plan are more or less desirable/valuable." The ARL allocates these indirect benefits proportionately to base and the increment, which results in a smaller increment and smaller TIF revenue payable to urban renewal authorities. *See* ARL at 12-15. The Court found that the distinction between direct and indirect benefits is against the purpose of the URL, not authorized by the URL, and contrary to the URL. *Id*. at *9-11.

To begin, the opinion states that the distinction between direct and indirect benefits "eviscerates the URL's express purpose of rehabilitating slum or blighted areas." *Id*. at *9. Specifically reasoning that "market perceptions that properties located in a TIF plan are more or less desirable or valuable logically are attributable to the TIF plan, not general market conditions." *Id*. at *10. Because of this "illogical distinction between direct and indirect benefits," the Court concluded that the allocation methodology in the ARL is inconsistent with the purpose of the URL. *Id*.

Further, the Court found that the URL does not authorize the ARL's distinction between direct and indirect benefits, at least as currently formulated by the Administrator. *Id*. Because the URL does not authorize the distinction and the distinction itself is not reasonable, the Court found that deference to the Administrator was not appropriate, and that the URL did not authorize the Administrator to create the distinction, because it was inconsistent with the URL.[1] *Id*. at *11.

Dissent

Judge Yun concurred with the majority opinion with the exception of finding the direct and indirect benefits distinction contrary to law. Quoting the district court, the dissent states: "the URL does not contain an[y] allocation methodology" but rather "expressly dictates that the [Administrator] shall specify how Assessors perform the allocation." *Id*. at *14. Because the "intricacies of TIF are complex," the dissent cautions against the majority's holding that refused to give deference to the Administrators expertise. *Id*. at *15. In all, the dissent finds that the "majority's disapproval of the [ARL's] distinction between direct and indirect benefits crosses the line into the area of public policy." *Id*. at *16; *relying on Town of Telluride v. Lot Thirty-Four Venture, LLC*, 3 P.3d 30, 38 (Colo. 2000).

It remains to be seen whether either or both of the Defendants in this case (i.e., the Assessor and the Administrator) will seek review with the Colorado Supreme Court. The Defendants have until February 17, 2022, to seek such review.

Conclusion

In summary, *Aurora Urban Renewal Authority v. Kaiser* concluded that the current TIF allocation methodology allowing assessors to attribute "indirect benefits" proportionality to the base and increment is impermissible. The ruling has the effect of making more TIF revenue available to urban renewal authorities. Still unclear is whether the Assessor and/or the Administrator will seek certiorari review with the Colorado Supreme Court and how the Administrator will proceed with a revised allocation methodology in the ARL if judicial review is not sought.

---

1 The Court, while finding that the important case of *Denver Urban Renewal Authority v. Byrne*, 618 P.2d 1374 (Colo. 1980) was not controlling to the facts at issue, nonetheless reaffirmed the *Byrne* case holding. Relevantly, *Byrne* held that any incremental increase is deemed the result of the urban redevelopment efforts by the municipality and is distributed to the urban renewal authority. *Accord, E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park*, 739 P.2d 862, 864 (Colo. App. 1987).

2022 WL 67850

NOTICE: THIS OPINION HAS NOT BEEN RELEASED FOR PUBLICATION IN THE PERMANENT LAW REPORTS. A PETITION FOR REHEARING IN THE COURT OF APPEALS OR A PETITION FOR CERTIORARI IN THE SUPREME COURT MAY BE PENDING.
Colorado Court of Appeals, Division II.

AURORA URBAN RENEWAL AUTHORITY, Corporex Colorado LLC, Fitzsimons Village Metropolitan District No. 1, Fitzsimons Village Metropolitan District No. 2, and Fitzsimons Village Metropolitan District No. 3, Plaintiffs-Appellants,
v.
PK KAISER, in his official capacity as Arapahoe County Assessor; and JoAnn Groff, in her official capacity as Colorado State Property Tax Administrator, Defendants-Appellees.

Court of Appeals No. 20CA1162
|
Announced January 6, 2022

Arapahoe County District Court No. 18CV31387, Honorable Elizabeth Weishaupl, Judge

Attorneys and Law Firms

Kutak Rock LLP, Daniel C. Lynch, Thomas W. Snyder, Thomas A. Isler, Denver, Colorado; Daniel L. Brotzman, City Attorney, Christine McKenney, Senior Assistant City Attorney, Aurora, Colorado, for Plaintiff-Appellant Aurora Urban Renewal Authority

Fairfield and Woods P.C., Craig D. Joyce, Lee Katherine Goldstein, Denver, Colorado, for Plaintiffs-Appellants Corporex Colorado LLC, Fitzsimons Village Metropolitan District No. 1, Fitzsimons Village Metropolitan District No. 2, and Fitzsimons Village Metropolitan District No. 3

Ronald A. Carl, County Attorney, John R. Christofferson, Deputy County Attorney, Benjamin P. Swartzendruber, Senior Assistant County Attorney, Littleton, Colorado, for Defendant-Appellee PK Kaiser

Philip J. Weiser, Attorney General, Robert H. Dodd, First Assistant Attorney General, John H. Ridge, Assistant Attorney General, Jessica E. Ross, Assistant Attorney General, Denver, Colorado, for Defendant-Appellee JoAnn Groff

Brownstein Hyatt Farber Schreck, LLP, Carolynne C. White, Christopher O. Murray, Angela J. Hygh, Denver, Colorado, for Amici Curiae Downtown Colorado, Inc., Colorado Municipal Bond Dealers' Association, and National Association for Industrial and Office Parks

David W. Broadwell, Laurel Witt, Denver, Colorado, for Amicus Curiae Colorado Municipal League

Hall & Evans, L.L.C., Andrew D. Ringel, Denver, Colorado, for Amicus Curiae Colorado Counties, Inc.

Opinion

Opinion by JUDGE BERGER

¶ 1 This case addresses the financing of urban renewal projects under Colorado's Urban Renewal Law (URL), sections 31-25-101 to -116, C.R.S. 2021, and, more specifically, the intricacies of Tax Increment Financing (TIF), which is central to the viability of urban renewal projects.

¶ 2 Plaintiff Aurora Urban Renewal Authority appeals the district court's judgment in favor of defendants, the Arapahoe County Assessor (Assessor) and the Colorado Property Tax Administrator (Administrator). Plaintiffs Fitzsimons Village Metropolitan District No. 1, Fitzsimons Village Metropolitan District No. 2, and Fitzsimons Village Metropolitan District No. 3 (collectively, Metro Districts) and Corporex Colorado LLC (Corporex) appeal the district court's judgment dismissing them for lack of standing. We conclude that all of the plaintiffs have standing and that, in one respect, the rules promulgated by the Administrator that govern the assessment of properties in an urban renewal area are contrary to law.

I. Relevant Facts and Procedural History

¶ 3 The URL authorizes the creation of urban renewal authorities like the Aurora Urban Renewal Authority to undertake urban renewal projects aimed at redeveloping slum and blighted areas. §§ 31-25-104, -105(1)(b), (1)(i)(I), C.R.S. 2021. To fund these projects, the URL authorizes the use of TIF. § 31-25-107(9)(a), C.R.S. 2021.

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¶ 4 "TIF uses recently assessed property values in an urban renewal area to establish a base tax value." *City of Aurora v. Scott*, 2017 COA 24, ¶ 2, 410 P.3d 720; § 31-25-107(9)(a)(I). "As property values increase above the base value, increased tax revenues are allocated to the financing of the renewal project. Those revenues are applied to the renewal fund and used to pay down the debt against the project." *Scott*, ¶ 2; § 31-25-107(9)(a)(II).

> [T]he property is reassessed in subsequent years for tax purposes in the hopes that the urban renewal plan has increased its value. After all levies are assessed and collected on the subsequent valuation, any incremental increase in the base amount is deemed the result of the urban redevelopment efforts by the municipality and is distributed to the urban renewal authority.

***2** *E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park*, 739 P.2d 862, 864 (Colo. App. 1987); *accord Northglenn Urb. Renewal Auth. v. Reyes*, 2013 COA 24, ¶ 3, 300 P.3d 984.

¶ 5 The statute does not specify precisely how county assessors should calculate base and increment values. Instead, the statute delegates that authority to the Administrator: "The manner and methods by which the requirements of this subsection (9) are to be implemented by county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109(1)(e), C.R.S. [2021]." § 31-25-107(9)(h).

¶ 6 The Administrator's manuals are titled the Assessors' Reference Library (Reference Library). *See* 2 Div. of Prop. Tax'n, Dep't of Loc. Affs., *Assessors' Reference Library* § 12, at 12.1-12.36 (rev. Oct. 2021).

¶ 7 The URL also provides that

> [i]n the event there is a general reassessment of taxable property valuations in any county including all or part of the urban renewal area subject to division of valuation for assessment under paragraph (a) of this subsection (9) or a change in the sales tax percentage levied in any municipality including all or part of the urban renewal area subject to division of sales taxes under paragraph (a) of this subsection (9), the portions of valuations for assessment or sales taxes under both subparagraphs (I) and (II) of said paragraph (a) shall be proportionately adjusted in accordance with such reassessment or change.

§ 31-25-107(9)(e).

¶ 8 The Aurora Urban Renewal Authority, Corporex, and the Metro Districts sued the Assessor and Administrator, alleging that the Reference Library's apportionment methodology violates the URL. They sought both declaratory and injunctive relief.

¶ 9 The Assessor and Administrator filed comprehensive motions to dismiss, challenging both standing and the merits of the plaintiffs' claims. The district court resolved the motions to dismiss, ruling as follows:

- the Metro Districts and Corporex lack constitutional standing;
- the Aurora Urban Renewal Authority and the Metro Districts lack prudential standing to sue the Administrator;
- plaintiffs' claims survived defendants' contention that they are barred for failure to exhaust administrative remedies; and
- the district court had no authority to grant injunctive relief against the Administrator or the Assessor.

¶ 10 Then, on cross-motions for summary judgment regarding the remaining claims between the Aurora Urban Renewal Authority and the Assessor, the district court reached the merits and construed the statutory term "general reassessment" to include the statutory biennial reassessment of real property and, accordingly, granted summary judgment in favor of the Assessor.

¶ 11 The Metro Districts and Corporex appeal the district court's standing determination. The Aurora Urban

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Renewal Authority appeals the district court's prudential standing determination (as to the Administrator) and the summary judgment on the merits in favor of the Assessor.

II. All of the Plaintiffs have Constitutional Standing

***3** ¶ 12 The Metro Districts and Corporex argue that the district court erred by dismissing them for lack of constitutional standing. We agree.

A. Standing Law

¶ 13 Standing is a question of law, which we review de novo.[1] *Ainscough v. Owens*, 90 P.3d 851, 854 (Colo. 2004).

¶ 14 Under Colorado law, a plaintiff must satisfy two prongs to establish standing. *Id.* at 855; *Wimberly v. Ettenberg*, 194 Colo. 163, 168, 570 P.2d 535, 539 (1977). "First, the plaintiff must have suffered an injury in fact, and second, that injury must be to a legally protected interest as contemplated by statutory or constitutional provisions." *Bd. of Cnty. Comm'rs v. Colo. Oil & Gas Conservation Comm'n*, 81 P.3d 1119, 1122 (Colo. App. 2003).

B. Injury in Fact

¶ 15 The doctrine of standing is not a meaningless hoop that we require plaintiffs to jump through. It embraces both constitutional and prudential considerations. *City of Greenwood Village v. Petitioners for Proposed City of Centennial*, 3 P.3d 427, 437 (Colo. 2000). The injury-in-fact prong ensures concrete adversity between the parties before the court so that the court's judgment does not devolve into an advisory opinion, which courts do not have jurisdiction to render. *Id.*; *Tippett v. Johnson*, 742 P.2d 314, 315 (Colo. 1987). "This court is not empowered to give advisory opinions based on hypothetical fact situations." *Tippett*, 742 P.2d at 315.

¶ 16 The supreme court has also instructed that the injury cannot be the "remote possibility of a future injury nor an injury that is overly 'indirect and incidental' to the defendant's action." *Ainscough*, 90 P.3d at 856 (quoting *Brotman v. E. Lake Creek Ranch, L.L.P.*, 31 P.3d 886, 890-91 (Colo. 2001)). However, "[i]n Colorado, parties to lawsuits benefit from a relatively broad definition of standing." *Id.* at 855.

¶ 17 Here, there is no real question about concrete adversity. The parties on the opposite sides of this case obviously are adverse to each other in a matter that has great importance to both them and the public at large. Nor is this a taxpayer standing case, which is governed, in part, by different requirements of standing. *See TABOR Found. v. Colo. Dep't of Health Care Pol'y & Fin.*, 2020 COA 156, ¶¶ 12-14, 487 P.3d 1277.

¶ 18 We also cannot ignore that the claims pleaded by the plaintiffs invoke the Uniform Declaratory Judgments Law, §§ 13-51-101 to -115, C.R.S. 2021, a remedial statute that must be liberally construed and administered. § 13-51-102, C.R.S. 2021. The interplay between the doctrine of standing and the declaratory judgments law, at times, may be difficult to ascertain, but that is not the case here.

***4** ¶ 19 The defendants argue that the Metro Districts have alleged only a remote possibility of a future injury that is not concrete, and that Corporex has alleged only a speculative and indirect future injury.

¶ 20 In their amended complaint, the plaintiffs allege that the Metro Districts "issued bonds based on the legitimate and reasonable expectation that timely completion of the development plan would produce significant increases in the assessed valuation, and hence Incremental Revenues upon which a significant part of the security for the bonds depends." Corporex similarly alleged that it "obligated itself to finance and construct certain improvements within the Urban Renewal Areas ... partially in reliance on the Metro Districts issuing tax increment revenue-supported bonds."

¶ 21 True, the Metro Districts and Corporex have not alleged that their bonds actually are in default. But the fact that the Metro Districts and Corporex have not suffered all conceivable damage is not determinative.

¶ 22 "[T]he required showing of demonstrable injury is somewhat relaxed in declaratory judgment actions." *Mt. Emmons Min. Co. v. Town of Crested Butte*, 690 P.2d 231, 240 (Colo. 1984). The purpose of a declaratory judgment "is to settle controversies and to afford parties judicial relief from uncertainty and insecurity with respect to their rights and legal relations." *Id.*

¶ 23 To establish an injury in fact for the purposes of standing in the declaratory judgment context, the supreme court has explained that a plaintiff must "demonstrate that

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there is an existing legal controversy that can be effectively resolved by a declaratory judgment, and not a mere possibility of a future legal dispute over some issue." *Bd. of Cnty. Comm'rs v. Bowen/Edwards Assocs., Inc.*, 830 P.2d 1045, 1053 (Colo. 1992).

¶ 24 The *Colorado Oil & Gas Conservation Commission* division further explained the requirement of injury in fact in the declaratory judgment context:

> The injury in fact element of standing need not consist of a direct, pecuniary loss. In the context of administrative action, this element of standing does not require that a party suffer actual injury, as long as the party can demonstrate that the administrative action "threatens to cause" an injury. However, an injury must be sufficiently direct and palpable to allow a court to say with fair assurance that there is an actual controversy proper for judicial resolution.
>
> The injury in fact element of standing is established when the allegations of the complaint, along with any other evidence submitted on the issue of standing, establish that a regulatory scheme threatens to cause injury to the plaintiff's present or imminent activities.

81 P.3d at 1122 (citation omitted).

¶ 25 Plaintiffs have adequately pleaded that the Reference Library, published by the Administrator and applied by the Assessor, has resulted in minimal revenue to the TIF despite great increases in property values. According to the complaint, a methodology that leads to this result jeopardizes the viability of the Aurora Urban Renewal Authority's urban renewal projects.

¶ 26 When the purposes and requirements of the standing doctrine are laid side by side with the declaratory judgments law, we conclude that the Metro Districts and Corporex have alleged facts sufficient to demonstrate an injury in fact.[2]

C. Legally Protected Interest

***5** ¶ 27 The second prong of the standing analysis requires a court to determine "whether the plaintiff has a claim for relief under the constitution, the common law, a statute, or a rule or regulation." *Ainscough*, 90 P.3d at 856.

¶ 28 The defendants argue that the Metro Districts and Corporex have no legally protected interest under the URL. We agree that Corporex's interest in the apportionment and distribution of TIF revenues may be more attenuated than that of the Metro Districts. But neither Corporex nor the Metro Districts are mere bystanders in the urban renewal process. They are integral participants.

¶ 29 The URL specifically contemplates the involvement of political subdivisions like the Metro Districts in urban renewal plans. The URL grants urban renewal authorities the authority to enter into agreements with other taxing entities like the Metro Districts. § 31-25-107(11). The URL also allows urban renewal authorities to make payments to other entities through agreements executed under the URL. § 31-25-107(9)(a)(II).

¶ 30 While the question of standing is closer as to Corporex for the reasons articulated by the district court, we conclude that Corporex, as well, has standing. The URL specifically contemplates agreements with private enterprises like Corporex. *See* § 31-25-107(9)(a)(II). "[T]he General Assembly expressed a preference for ameliorating blight through private redevelopment in section 31-25-107(3.5)(g), which provides that an urban renewal plan should 'afford maximum opportunity ... for the rehabilitation or redevelopment of the urban renewal area by *private enterprise*.' " *Arvada Urb. Renewal Auth. v. Columbine Pro. Plaza Ass'n*, 85 P.3d 1066, 1070-71 (Colo. 2004) (emphasis added) (quoting § 31-25-107(3.5)(g), C.R.S. 2003, now found at § 31-25-107(4)(g)).

¶ 31 Urban renewal, as contemplated by the URL, cannot be successful without governmental intermediaries like the Metro Districts or private enterprises like Corporex. Because the Metro Districts and Corporex are in the class of entities expressly acknowledged in the URL, we conclude that their alleged injuries were to a "legally protected interest as contemplated by statutory or constitutional provisions." *Wimberly*, 194 Colo. at 168, 570 P.2d at 539.

¶ 32 Accordingly, we hold that all of the plaintiffs have constitutional standing.

III. The Metro Districts and the Aurora Urban Renewal Authority have Prudential Standing Under the Facts Alleged in the Complaint

¶ 33 As noted, the district court dismissed all claims asserted by the governmental plaintiffs against the

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Administrator for lack of prudential standing. The Metro Districts and the Aurora Urban Renewal Authority argue that this was error. We agree.

A. Standard of Review and Applicable Law

¶ 34 Standing is a question of law, which we review de novo. *Ainscough*, 90 P.3d at 854.

¶ 35 In addition to the two-prong constitutional standing test discussed above, the supreme court in *Martin v. District Court*, 191 Colo. 107, 109, 550 P.2d 864, 866 (1976), "established a rule precluding standing when: (1) the agency seeking judicial review is subordinate to the agency whose decision is sought to be reviewed, and (2) no statutory or constitutional provision confers a right on the subordinate agency to seek judicial review of the superior agency's decision." *City of Greenwood Village*, 3 P.3d at 438. This prudential standing limitation is also referred to as the political subdivision standing doctrine, and it exists "so that courts do not unnecessarily intrude into matters which are more properly committed to resolution in another branch of government." *Id.* at 437 (citation omitted).[3]

***6** ¶ 36 For example, in *Romer v. Board of County Commissioners*, the supreme court held that a county department of social services was subordinate to the State Department of Human Services with regard to its social services budget and thus could not sue the state department. 956 P.2d 566, 574 (Colo. 1998). The court explained that the Colorado Human Services Code, which states, "[t]he count[ies] ... *shall serve as agents of the state department* and shall be charged with the administration of public assistance and welfare," was "unmistakably clear in pointing out that a county board is an agent of the state when it makes expenditures for social services." *Id.* (emphasis in original) (quoting § 26-1-118(1), C.R.S. 2021). The court also found it significant that a "county may not adopt a social services budget until it has been submitted to the state for review" and that the "county social services fund must be administered in accordance with state rules." *Id.*

¶ 37 Similarly, in *State, Department of Personnel v. Colorado State Personnel Board*, the court reasoned that, even though the department and the board were "distinct entities with separate powers and responsibilities," the director of the department was subordinate to the board because she was "governed by the rules promulgated by" the board. 722 P.2d 1012, 1019 (Colo. 1986) (quoting *Colo. Ass'n of Pub. Emps. v. Lamm*, 677 P.2d 1350, 1355 (Colo. 1984)).

B. The Metro Districts Have Standing to Sue the Administrator Under the Facts Alleged in the Complaint

¶ 38 The Administrator argues that it is a superior state agency to the Metro Districts. But unlike the county department of human services in *Romer*, the Metro Districts are not agents of the Administrator. The Metro Districts are not required to submit their bonds to the Administrator for review. Nor are the Metro Districts charged with administering their bonds in accordance with the Administrator's rules.

¶ 39 Like the Colorado State Personnel Board and the Colorado State Department of Personnel, the Metro Districts and the Administrator are distinct entities with separate powers and responsibilities. However, unlike the director of the Department, the Metro Districts are not governed by rules promulgated by the Administrator for urban renewal projects or TIF. In fact, the Reference Library is only binding on county assessors. *Huddleston v. Grand Cnty. Bd. of Equalization*, 913 P.2d 15, 17 (Colo. 1996).

¶ 40 Undeterred, the Administrator argues that because the Metro Districts are not independent governmental entities and do not have inherent sovereign authority, they are necessarily inferior to the Administrator. We reject this argument because the Administrator has not cited (and we are not aware of) any authority holding that any political subdivision that lacks independent and sovereign authority is necessarily a subordinate agency for the purposes of the political subdivision standing doctrine.

¶ 41 Accordingly, we hold that the Metro Districts have standing to sue the Administrator under the facts alleged in the complaint.

C. The Aurora Urban Renewal Authority Has Standing to Sue the Administrator and the Assessor Under the Facts Alleged in the Complaint

¶ 42 The Administrator and Assessor further argue that they are superior state agencies to the Aurora Urban Renewal Authority and that the political subdivision

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standing doctrine precludes the Aurora Urban Renewal Authority's claims.

¶ 43 The Aurora Urban Renewal Authority is an urban renewal authority created under section 31-25-104 of the URL. The relationship of the Aurora Urban Renewal Authority to the Administrator or to the Assessor is not the type of agency relationship that existed between the county department of human services and the State Department of Human Services in *Romer*. *See* 956 P.2d at 574. The Aurora Urban Renewal Authority does not have to submit urban renewal plans to the Administrator or the Assessor or otherwise answer to the Administrator or Assessor.

***7** ¶ 44 The Administrator argues that the Aurora Urban Renewal Authority is a subordinate agency because it is a public body with no constitutional or statutory authority to act with regard to the calculation or distribution of TIF revenues. However, unlike the director in *State, Department of Personnel*, the Aurora Urban Renewal Authority is not governed by rules promulgated by the Administrator. *See* 722 P.2d at 1019. As discussed above, the Reference Library is only binding on the county assessors. *Huddleston*, 913 P.2d at 17.

¶ 45 The Administrator further argues that the political subdivision standing doctrine is not limited to intra-agency disputes within a vertical hierarchy. In support, the Administrator cites *Board of County Commissioners v. Colorado Department of Public Health and Environment*, 218 P.3d 336, 337-38 (Colo. 2009) (*Adams County*). But *Adams County* does not support the Administrator's argument.

¶ 46 In *Adams County*, the court explained that "the [Colorado Department of Public Health and Environment] may not issue a license or permit to an applicant until the applicant has first applied for and received a Certificate of Designation ('CD') from the county." *Id.* at 338 (footnote omitted). The court reasoned that because the county had a separate power to issue or decline to issue a CD before the Department could issue a license or permit, it was not subordinate to the Department for purposes of the political subdivision standing doctrine. *Id.* at 346-47.

¶ 47 As in *Adams County*, the Aurora Urban Renewal Authority and the Administrator have separate statutory powers. The Aurora Urban Renewal Authority exists to "undertake urban renewal projects." § 31-25-105(1)(b). The Administrator prepares and publishes Reference Library manuals. § 31-25-107(9)(h). Without an urban renewal plan, there is no TIF. Therefore, just like the Department was powerless to issue a license or permit before the county issued a CD in *Adams County*, the Administrator's Reference Library manuals related to TIF calculations are meaningless if an urban renewal authority like the Aurora Urban Renewal Authority doesn't adopt an urban renewal plan financed by TIF. Accordingly, the Aurora Urban Renewal Authority is not a subordinate agency to the Administrator or the Assessor with respect to urban renewal plans or TIF.

¶ 48 For these reasons, we hold that the political subdivision standing doctrine is no impediment to the Aurora Urban Renewal Authority suing the Administrator or the Assessor under the facts pleaded in the complaint, and therefore the Aurora Urban Renewal Authority has prudential standing.

IV. The District Court Correctly Declined to Dismiss the Plaintiffs' Claims for Failure to Exhaust Administrative Remedies

¶ 49 The Assessor further argues that all of the plaintiffs' claims are untimely because the plaintiffs did not seek judicial review of the State Board of Equalization action within thirty-five days. The question of whether the plaintiffs were required to exhaust administrative remedies before filing the suit underlying this appeal was preserved.

A. Additional Facts

¶ 50 In October 2016, revisions to Volume 2, Chapter 12, of the Reference Library were discussed at a public hearing. There, the Administrator stated that the interpretation of "general reassessment" and the corresponding methodology used to calculate the base and increment values had been substantially unchanged since 1984. Ultimately, the State Board of Equalization approved minor changes to the TIF allocation procedures (but not the allocation procedures challenged on appeal), the Office of Legislative Legal Services reviewed and approved the changes, and the changes went into effect in January 2017.

***8** ¶ 51 None of the plaintiffs sought review of these changes under sections 39-9-108 or 24-4-106(4), C.R.S. 2021. Instead, the plaintiffs filed the suit underlying this appeal in June 2018, sixteen months after the thirty-five-day deadline in section 24-4-106(4) had passed.

B. Applicable Law

¶ 52 Under section 24-4-106(4), "any person adversely affected or aggrieved by any agency action may commence an action for judicial review in the district court within thirty-five days after such agency action becomes effective."

¶ 53 In general, a "plaintiff's failure to exhaust administrative remedies may deprive a court of jurisdiction to grant the requested relief." *Horrell v. Dep't of Admin.*, 861 P.2d 1194, 1197 (Colo. 1993). This rule prevents "piecemeal application for judicial relief and unwarranted interference by the judiciary in the administrative process." *Id.*

¶ 54 But these policies are not furthered "when available administrative remedies are ill-suited for providing the relief sought and when the matters in controversy consist of questions of law rather than issues committed to administrative discretion and expertise." *Id.*

¶ 55 In *Collopy v. Wildlife Commission*, the supreme court upheld the district court's denial of the defendant's motion to dismiss for failure to exhaust administrative remedies. 625 P.2d 994, 998 (Colo. 1981). The court reasoned that the remedies afforded by section 24-4-106(4) were inadequate because the "factual bases for [the plaintiff's constitutional] claim had not arisen and could not be foretold with any confidence when the rule-making hearings were held in 1968." *Id.* at 1005. Accordingly, the court concluded it would be unjust "[t]o compel [the plaintiff] to litigate this controversy on the basis of a factual record compiled at a hearing conducted several years before the damage constituting the alleged [constitutional violation] occurred." *Id.*

¶ 56 The *Horrell* court concluded that the district court erred by dismissing the plaintiffs' claims for failure to exhaust administrative remedies because the claims challenged the constitutionality of a statute. 861 P.2d at 1197. The supreme court has reached the same result in cases of statutory interpretation. *See Hamilton v. City & Cnty. of Denver*, 176 Colo. 6, 11-12, 490 P.2d 1289, 1292 (1971) ("The question of whether petitioner is entitled to exemption as a sole surviving son is, as we have seen, solely one of statutory interpretation. The resolution of that issue does not require any particular expertise on the part of the appeal board; the proper interpretation is certainly not a matter of discretion." (quoting *McKart v. United States*, 395 U.S. 185, 197-99, 89 S.Ct. 1657, 23 L.Ed.2d 194 (1969))).

C. Application

¶ 57 The plaintiffs did not seek judicial review within thirty-five days under section 24-4-106(4). However, for two reasons we conclude that even if there was a failure to exhaust administrative remedies, it was not fatal to the plaintiffs' claims.

¶ 58 First, it is not clear whether the issues underlying the claims brought by the plaintiffs were even at issue in the October 2016 proceeding. Based on the Administrator's statements, the TIF methodology at issue in this case has been included in the Reference Library since 1984. If true, the factual and legal bases for the plaintiffs' claims had not arisen when the TIF methodology was included in the Reference Library in 1984. More significantly, the urban renewal plan in which the Aurora Urban Renewal Authority, the Metro Districts, and Corporex are involved did not exist in 1984. So, like the court in *Collopy*, we conclude that it would be unjust to require the plaintiffs to litigate this controversy on the basis of a factual record compiled at a hearing conducted years before the damage constituting the alleged statutory violation occurred.

***9** ¶ 59 Second, the issue of whether the TIF methodology in the Reference Library is consistent with the URL presents a question of statutory interpretation. Questions of statutory interpretation are questions of law. *Smith v. Exec. Custom Homes, Inc.*, 230 P.3d 1186, 1189 (Colo. 2010). Like the questions of law in *Horrell*, *Hamilton*, and *McKart*, the ultimate question of whether an administrative regulation is contrary to law is not one committed to agency discretion and expertise. It does not require agency expertise to determine whether the Reference Library is consistent with the URL, and whether the Reference Library should be consistent with the URL is not a matter of agency discretion.

¶ 60 Accordingly, the district court correctly declined to dismiss the plaintiffs' claims for failure to exhaust administrative remedies.

V. The District Court Erred by Granting Summary Judgment in Favor of the Assessor

¶ 61 Addressing the merits of their claims, the plaintiffs argue that the Reference Library is inconsistent with the

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URL in two ways. First, plaintiffs argue that the term "general reassessment" in the URL refers only to a change in the "statewide general assessment rate of real property." Second, the plaintiffs argue that the Reference Library's methodology for calculating TIF revenues conflicts with the URL and case law interpreting the URL. According to the plaintiffs, both of these errors divert revenue that would otherwise be available to the Aurora Urban Renewal Authority, frustrating the operation of the URL.

¶ 62 Like the district court, we reject the plaintiffs' first argument. But, for the reasons stated below, we agree with their second argument.

A. Standard of Review and Preservation

¶ 63 The plaintiffs' arguments raise questions of statutory interpretation, which we review de novo. *See Prairie Mountain Publ'g Co., LLP v. Regents of Univ. of Colo.*, 2021 COA 26, ¶ 10, 491 P.3d 472.

¶ 64 The issue of whether the Reference Library conflicts with the URL was preserved for appeal.

B. Principles of Statutory Interpretation

¶ 65 "When interpreting a statute, our primary aim is to effectuate the legislature's intent. To do so, 'we look to the entire statutory scheme in order to give consistent, harmonious, and sensible effect to all of its parts, and we apply words and phrases in accordance with their plain and ordinary meanings.' " *Nieto v. Clark's Mkt., Inc.*, 2021 CO 48, ¶ 12, 488 P.3d 1140 (citing and quoting *Bill Barrett Corp. v. Lembke*, 2020 CO 73, ¶ 14, 474 P.3d 46). "[W]e do not add words to or subtract words from a statute." *Id.* (quoting *People ex rel. Rein v. Meagher*, 2020 CO 56, ¶ 22, 465 P.3d 554). When the plain language is unambiguous, we apply the statute as written. *Id.*; *McCoy v. People*, 2019 CO 44, ¶ 38, 442 P.3d 379.

¶ 66 However, when the plain language is ambiguous — that is, susceptible of more than one reasonable interpretation — we may look to other interpretive aids to discern the legislature's intent. *Nieto*, ¶ 13; *People v. Berry*, 2017 COA 65, ¶¶ 13-14, 459 P.3d 578, *aff'd*, 2020 CO 14, 457 P.3d 597.

C. The Interpretation of the Term "General Reassessment" in the Reference Library is Consistent with the Plain Language of the URL

¶ 67 As discussed above, TIF works by assigning property in the urban renewal plan area two valuations: a base valuation, "representing the valuation immediately prior to the approval of the plan," and an incremental valuation, representing "the valuation subsequent to the approval of the plan." *Denver Urb. Renewal Auth. v. Byrne*, 618 P.2d 1374, 1378 (Colo. 1980); *see* § 31-25-107(9)(a)(I)-(II).

¶ 68 The URL states the following:

> In the event there is a general reassessment of taxable property valuations in any county including all or part of the urban renewal area subject to division of valuation for assessment under paragraph (a) of this subjection (9) or a change in the sales tax percentage levied in any municipality including all or part of the urban renewal area subject to division of sales taxes under paragraph (a) of this subsection (9), the portions of valuations for assessment or sales taxes under both subparagraphs (I) and (II) of said paragraph (a) shall be proportionately adjusted in accordance with such reassessment or change.

***10** § 31-25-107(9)(e).

¶ 69 We reject, for precisely the reasons articulated by the district court, the plaintiffs' argument that the term "general reassessment" refers only to a change in the "statewide general assessment *rate* of real property." Simply put, there is no statutory textual support for that argument.

¶ 70 The statute does not use the term "rate" or in any way indicate that the occurrence of a general reassessment is limited to a change in the statewide general assessment rate. By contrast, the statute uses the term "percentage" when discussing changes to sales tax. The fact that the same subsection specifically mentions a change in "percentage" for sales tax but does not use similar language

for property tax is persuasive evidence that if the General Assembly wanted to limit proportional adjustments to a change in the tax rate, it knew how to do so. "Where the legislature could have chosen to restrict the application of a statute, but chose not to, we do not read additional restrictions into the statute." *Springer v. City & Cnty. of Denver*, 13 P.3d 794, 804 (Colo. 2000).

¶ 71 The plaintiffs' proposed interpretation also ignores the fact that "general reassessment" also refers to any personal property in the TIF area. Personal property, which is listed and valued separately from real property, is reassessed every year, while real property is currently reassessed every two years. §§ 39-1-104(10.2)(a), (12.3)(a)(I), -105, C.R.S. 2021. The assessment rate for personal property has changed only once since 1975 — when it was reduced from thirty percent to twenty-nine percent with the passage of the Gallagher Amendment in 1982. Colo. Const. art. X, §§ 3, 15 (repealed 2020). Nothing in the plain language of the statute evidences an intent to limit "general reassessment" to only those instances when the *real* property assessment rate changes.

¶ 72 Finally, the dictionary definition of the term "general reassessment" supports the defendants' interpretation. The URL does not define the term "general reassessment." "When a statute does not define its terms but the words used are terms of common usage, we may refer to dictionary definitions to determine the plain and ordinary meanings of those words." *Marks v. Koch*, 284 P.3d 118, 123 (Colo. App. 2011).

¶ 73 Black's Law Dictionary defines "reassessment" as "[a] reappraisal, revaluation, or review; a recalculation of an amount payable or owed" or "[a]n official revaluation of property, often repeated periodically, for the levying of a tax." Black's Law Dictionary 144 (11th ed. 2019). "General" is defined as "involving, applicable to, or affecting the whole ... not confined by specialization or careful limitation ... concerned or dealing with universal rather than particular aspects." Merriam-Webster Dictionary, https://perma.cc/M2WF-NYER. Combining these dictionary definitions, the plain and ordinary meaning of "general reassessment" is the commonly occurring revaluation. Nothing in the dictionary definitions indicates that the term "general reassessment" is limited only to a change in the statewide general assessment *rate* of real property. Accordingly, section 31-25-107(9)(e) applies whenever there is a general reassessment (i.e., a commonly occurring revaluation) of property values within the TIF area.

***11** ¶ 74 Because this is the only reasonable construction of this statute, we are not at liberty to consider legislative history or use other interpretive aids. Rather, we apply the statute as written. *Smith*, 230 P.3d at 1189.

¶ 75 We thus conclude that the portions of the Reference Library that allow the Assessor to proportionately adjust the base and increment values any time there is a general reassessment, and not only when the statewide reassessment rate changes, are not contrary to law.

D. The Reference Library's Distinction Between Direct and Indirect Benefits is Contrary to Law

¶ 76 Although it is not plaintiffs' primary argument, they also challenge, sufficiently to preserve the issue for decision by us, the central assumption baked into the Reference Library (but not the URL) that requires the direct and indirect effects of the creation of an urban renewal plan to be allocated differently.[4]

1. The Reference Library's Distinction Between Direct and Indirect Benefits Eviscerates the URL's Express Purpose of Rehabilitating Slum or Blighted Areas

¶ 77 The purpose of the URL, as expressly stated by the General Assembly, is to rehabilitate slum or blighted areas through the creation of urban renewal authorities that undertake urban renewal projects, which are often funded by TIF. §§ 31-25-102, -104, -105(1)(b), -107(9)(a), C.R.S. 2021. As noted, "[w]hen interpreting a statute, our primary aim is to effectuate the legislature's intent." *Nieto*, ¶ 12. "All general provisions, terms, phrases, and expressions, used in any statute, shall be liberally construed, in order that the true intent and meaning of the general assembly may be fully carried out." § 2-4-212, C.R.S. 2021; *see also* § 2-4-201, C.R.S. 2021.

¶ 78 The Reference Library distinguishes between reassessment and non-reassessment changes.

> Non-reassessment changes are *property specific* and affect the increment only. Value changes to specific properties are caused by one or more of three events:
>
> 1) Changes to the physical characteristics of a property
>
> 2) Changes to the legal characteristics of a property
>
> 3) Changes in a property's use.

2 *Assessors' Reference Library* at 12.15. "A non-reassessment event that impacts the value of property in a TIF area is attributable to the increment...." *Id.* The Reference Library then instructs that "after accounting for non-reassessment changes, the base and increment are adjusted annually by the change demonstrated within each TIF area due to reassessment." *Id.* at 12.17.

***12** ¶ 79 These distinctions clearly are consistent with the URL and are within the expertise and delegated authority of the Administrator. But the Reference Library also distinguishes between direct and indirect benefits by instructing that "indirect benefits resulting from market perceptions that properties located in a TIF plan are more or less desirable/valuable ... appl[y] proportionately to both the base and increment." *Id.* at 12.15. As illustrated by the examples contained in the Reference Library, this "proportionate" allocation, whatever it actually means, results in a very small percentage (or sometimes none) of the increase in value caused by the urban renewal plan being allocated to the urban renewal authority. *See id.* at 12.35-12.36.

¶ 80 "[M]arket perceptions that properties located in a TIF plan are more or less desirable/valuable," *id.* at 12.15, are conceptually different from general market conditions. Market perceptions that properties located in a TIF plan are more or less desirable or valuable logically are attributable to the TIF plan, not general market conditions. But for the TIF plan, there would be no market perception that a property in the TIF plan was more or less desirable or valuable.

¶ 81 Indeed, it is this illogical distinction between direct and indirect benefits that convinces us that the Reference Library's methodology as currently written and implemented is inconsistent with the purpose of the URL. The purpose of the URL is to rehabilitate slum or blighted areas through the creation of urban renewal authorities that undertake urban renewal projects. §§ 31-25-102(2), -104, -105(1)(b), -107(9)(a). It does not effectuate the legislature's intent to credit the base value with the increases in value caused by the urban renewal plan. And the result, the virtual defunding of TIF and urban renewal authorities, makes the objective of the URL impossible to achieve. This is not what the legislature intended.[5]

¶ 82 The Assessor argues that the Reference Library's distinction between direct and indirect benefits is necessary to effectuate the purpose of the URL. Without this distinction, the Assessor argues, "an urban renewal authority could simply attach TIF provisions to tracts of property and then do nothing, while reaping the benefit of market value increases." It is certainly possible that an urban renewal authority could act this way. But any such short-term benefit is illusory because when property owners or investors realize that the plan is not going to be executed, any initial indirect market value increases will evaporate.

¶ 83 Additionally, the defendants do not point to any record evidence suggesting that the distinction between direct and indirect benefits incentivizes urban renewal. Instead, as discussed above, the examples contained in the Reference Library demonstrate that the Reference Library's current methodology results in a very small percentage (or sometimes none) of the increase in value within urban renewal areas being allocated to the urban renewal authority. 2 *Assessors' Reference Library* at 12.35-12.36. This eviscerates the URL's express purpose of rehabilitating slum or blighted areas.

***13** ¶ 84 We have not been tasked with determining the best method for calculating TIF revenues or the best way to incentivize urban renewal. But we are tasked with determining whether the method chosen (particularly one so obtuse and counterintuitive) is consistent with the stated purposes of a statute enacted by the General Assembly.

2. The URL Does Not Authorize the Reference Library's Distinction Between Direct and Indirect Benefits, at Least as Currently Formulated by the Administrator

¶ 85 Our conclusion that the distinction between direct and indirect benefits eviscerates the express purpose of the URL is buttressed by the fact that nothing in the URL authorizes this distinction, at least in the manner effected by the Reference Library.

¶ 86 The URL distinguishes between base value and incremental value. *See* § 31-25-107(9)(a)(I)-(II). It makes no distinction between direct and indirect benefits as it pertains to incremental value. By contrast, the Reference Library distinguishes between direct and indirect benefits, instructing that "indirect benefits resulting from market perceptions that properties located in a TIF plan are more or less desirable/valuable ... appl[y] proportionately to both the base and increment." 2 *Assessors' Reference Library* at 12.15. No further explanation is provided in the Reference Library as to why this is the case or, as noted above, how such proportionate adjustment is achieved.

¶ 87 The Assessor argues that even though the URL does not expressly permit a distinction between direct and indirect benefits, nothing in the URL expressly prohibits

this distinction. The Assessor further argues that section 31-25-107(9)(h) grants the Administrator the authority to distinguish between direct and indirect benefits in the Reference Library.

¶ 88 Section 31-25-107(9)(h) grants the Administrator the authority to prepare and publish the "manner and methods by which the requirements of [section 31-25-107(9)] are to be implemented by the county assessors." Nothing in section 31-25-107(9)(h) distinguishes between direct and indirect benefits.

¶ 89 The defendants also argue that the Administrator's interpretation of the URL is entitled to deference. *See El Paso Cnty. Bd. of Equalization v. Craddock*, 850 P.2d 702, 705 (Colo. 1993). We do not question that the General Assembly delegated substantial authority to the Administrator to create rules, binding on county assessors, to effectuate the URL. § 31-25-107(9)(h); *Huddleston*, 913 P.2d at 17. Given that delegation of authority by the legislative branch to the executive branch, we must tread lightly to avoid the potential separation of powers concerns voiced by the district court. *See Markwell v. Cooke*, 2021 CO 17, ¶¶ 3-4, 482 P.3d 422. And we certainly understand the district court's reluctance to interfere with the "statutorily mandated duties of the Assessor." But that deference has limits. Those limits are exceeded when an administrative regulation renders virtually impossible the statutory purpose.

¶ 90 We are unable to determine exactly what the Reference Library's "proportionate allocation" means or how it is effectuated. This incomprehensibility does not mean that we must defer to the Administrator's regulations. Rather, it is precisely why we should *not* defer. No authority supports the proposition that complex regulations in complex subject areas are immune from judicial review. Instead, binding authority holds that an agency's interpretation of a statute is only entitled to deference if the interpretation is reasonable. *See Craddock*, 850 P.2d at 704-05; *see Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984).

***14** ¶ 91 The Administrator does not have discretion to interpret terms in a manner inconsistent with the purposes of the statute. *See Bd. of Cnty. Comm'rs v. Colo. Pub. Utils. Comm'n*, 157 P.3d 1083, 1089 (Colo. 2007). We therefore do not overstep our bounds by holding that the Reference Library's current distinction between direct and indirect benefits is contrary to the URL.

3. Case Law Interpreting the URL Demonstrates that the Reference Library's Distinction Between Direct and Indirect Benefits is Contrary to the URL

¶ 92 The Assessor finally points to the supreme court's *Byrne* opinion and the definition of "urban renewal project" to support the Reference Library's distinction between direct and indirect benefits.

¶ 93 The *Byrne* court explained,

> To ensure that tax revenues are allocated to [an urban renewal authority] based solely upon the increased valuation of property *because of the project*, section 31-25-107(9)(e) provides that in the event there is a general reassessment of taxable property within any county including any part of the urban renewal project, the valuation of property within the *project area* shall be proportionately adjusted in accordance with such assessment. The tax allocation structure has been carefully drafted so that there is a direct relationship between the increased valuation of property within the *project area*, and thus, increased ad valorem tax revenues, and the project financed by the bond issue. Denver has not lost the benefit of any ad valorem tax revenues which would otherwise have been available for its general revenue purposes had the *plan* never been adopted.

618 P.2d at 1382 (emphasis added). *Byrne* further explained, "[t]he portion of tax revenues allocated to [an urban renewal authority] represent the amount generated by virtue of increased property valuation which would not have existed *but for the project*." *Id.* at 1387 (emphasis added). Section 31-25-103(10), C.R.S. 2021, defines an urban renewal project as the "undertakings and activities ... in accordance with an urban renewal plan."

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¶ 94 Based on this language from *Byrne* and the statutory definition of "urban renewal project," the Assessor argues that indirect changes in value attributable to market perceptions that properties located in a TIF plan are more or less desirable or valuable are properly distinguished from direct changes in value attributable to the "undertakings and activities" of an urban renewal project. For two reasons, we disagree that *Byrne* controls here.

¶ 95 First, the *Byrne* court was addressing whether TIF was constitutional, not the question of statutory interpretation presented to us. Second, a close look at the language used in *Byrne* reveals that the use of the phrases "because of the project" and "but for the project" are not determinative. The *Byrne* court also used the term "project area" and referred to the urban renewal "plan." Accordingly, we conclude that *Byrne* does not control the outcome here.[6]

***15** ¶ 96 Other case law interpreting the URL demonstrates that the Reference Library's distinction between direct and indirect benefits is contrary to the URL. The *Winter Park* division explained that "[a]fter all levies are assessed and collected on the subsequent valuation, any incremental increase in the base amount is *deemed* the result of the urban redevelopment efforts by the municipality and is distributed to the urban renewal authority." 739 P.2d at 864 (emphasis added); *accord Reyes*, ¶ 3.

¶ 97 For all of these reasons, we conclude that, as written, the Reference Library's differential treatment of direct and indirect benefits does not effectuate the central purpose of the URL, is not supported by the text of the URL, and is contrary to case law interpreting the URL. Accordingly, as written, the current distinction in the Reference Library between direct and indirect benefits is contrary to law.

VI. Relief

¶ 98 While the Assessor is bound by the methodology in the Reference Library, *Huddleston*, 913 P.2d at 17, provisions of the Reference Library that conflict with the URL are void as a matter of law. § 24-4-103(8)(a), C.R.S. 2021 ("Any rule or amendment to an existing rule issued by any agency ... which conflicts with a statute shall be void."); *Rigmaiden v. Colo. Dep't of Health Care Pol'y & Fin.*, 155 P.3d 498, 504 (Colo. App. 2006).

¶ 99 By holding that, as written, the distinction between direct and indirect benefits in the Reference Library is contrary to the URL, we don't express any opinion on how the Reference Library should be written. It is not our function, nor that of the district court, to rewrite the Reference Library. *See Markwell*, ¶ 18. But courts have the authority and, when properly presented, the responsibility to declare that administrative regulations are contrary to law. *Id.*

¶ 100 The Aurora Urban Renewal Authority argues that the district court erred by concluding it lacked authority to issue injunctive relief. We recognize the district court's discretion to enter injunctions, both under the Uniform Declaratory Judgments Law, section 13-51-112, C.R.S. 2021, and under C.R.C.P. 65, but we acknowledge the separation of powers concerns that arise whenever the judicial branch directs specific action by the legislative or executive branches. C.R.C.P. 57(h); *see Markwell*, ¶ 3. To the extent a declaratory judgment is a sufficient remedy, an injunction is unnecessary and unwarranted. But if a properly crafted declaratory judgment does not remedy the law violation that we have concluded exists, the district court retains jurisdiction to enter appropriate injunctions. *Langlois v. Bd. of Cnty. Comm'rs*, 78 P.3d 1154, 1157 (Colo. App. 2003) ("The grant or denial of injunctive relief lies within the sound discretion of the trial court and will be reversed only upon a showing of an abuse of that discretion.").

VII. Disposition

¶ 101 We reverse the portion of the district court's judgment dismissing the Metro Districts and Corporex for lack of constitutional standing and the district court's ruling that the Metro Districts and the Aurora Urban Renewal Authority lacked prudential standing to sue the Administrator.

¶ 102 We affirm the portion of the district court's judgment rejecting dismissal based on a failure to exhaust administrative remedies. We also affirm the portion of the district court's summary judgment construing "general reassessment" to include the biennial reassessment of real property.

***16** ¶ 103 But the summary judgment in favor of the Assessor is reversed, and the case is remanded for the entry of an appropriate declaratory judgment in favor of the plaintiffs and against both the Administrator and the Assessor, consistent with this opinion.

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CHIEF JUDGE ROMÁN concurs.

JUDGE YUN concurs in part and dissents in part.

JUDGE YUN, concurring in part and dissenting in part.

¶ 104 I agree with most of the majority's opinion. I agree that all the plaintiffs have standing to sue and that they need not exhaust their administrative remedies before bringing their claims against the Arapahoe County Assessor (Assessor) and the Colorado Property Tax Administrator (Administrator). I also agree that the district court correctly construed "general reassessment" under section 31-25-107(9)(e), C.R.S. 2021, to mean the "regularly occurring revaluation of property." But I part ways with the majority when it concludes that the methodology in the Assessors' Reference Library (Reference Library) of proportionately adjusting the base and increment values is contrary to law. I therefore concur in part and dissent in part.

I. Background

¶ 105 For clarity and context, I include the following statutory framework governing the issues in this case, some of which the majority has already discussed.

A. The Administrator's Authority

¶ 106 The Administrator, who is responsible for administering the property tax laws, is appointed by, and is subject to the supervision and control of, the State Board of Equalization (Board). Colo. Const. art. X, § 15(2). The Administrator possesses specific statutory duties, powers, and authorities. § 39-2-109, C.R.S. 2021. Among those is the responsibility

> [t]o prepare and publish from time to time manuals, appraisal procedures, and instructions, after consultation with the advisory committee to the property tax administrator and the approval of the state board of equalization, concerning the methods of appraising and valuing land, improvements, personal property, and mobile homes and to require their utilization by assessors in valuing and assessing taxable property.

§ 39-2-109(1)(e).

¶ 107 Pursuant to this statutory authority, the Administrator developed and adopted the Reference Library. *See Douglas Cnty. Bd. of Equalization v. Fid. Castle Pines, Ltd.*, 890 P.2d 119, 124 (Colo. 1995). In preparing the Reference Library, the Administrator consults with a statutory advisory committee concerning the methods of appraising and valuing property. § 39-2-109(1)(e). The Reference Library is then submitted to the Board for review and approval. § 39-9-103(10)(a)(I), C.R.S. 2021. In doing so, the Board must conduct a public hearing and give stakeholders notice and an opportunity to be heard. § 39-9-102, C.R.S. 2021. Once the Board approves the Reference Library, it is "subject to legislative review, the same as rules and regulations, pursuant to section 24-4-103(8)(d), C.R.S." 2021. § 39-2-109(1)(e). Thus, the Reference Library adopted by the Administrator is a manual authorized by section 39-2-109(1)(e), approved by the Board pursuant to sections 39-9-103(10)(a)(I) and 39-9-102, and subject to review by the General Assembly pursuant to section 24-4-103(8)(d).

B. Colorado's Urban Renewal Law

***17** ¶ 108 Against this backdrop, Colorado's Urban Renewal Law (URL) authorizes the use of Tax Increment Financing (TIF) to finance urban renewal projects. § 31-25-107(9)(a). This is accomplished by

> first establishing a base amount upon which the various taxing authorities assess and collect their

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> levies. This base amount is determined by assessing the value of the property within the urban renewal area prior to adoption of the urban renewal plan. Thereafter, the property is reassessed in subsequent years for tax purposes in the hopes that the urban renewal plan has increased its value. After all levies are assessed and collected on the subsequent valuation, any incremental increase in the base amount is deemed the result of the urban redevelopment efforts by the municipality and is distributed to the urban renewal authority.

E. Grand Cnty. Sch. Dist. No. 2 v. Town of Winter Park, 739 P.2d 862, 864 (Colo. App. 1987).

¶ 109 But the URL also provides that

> [i]n the event there is a general reassessment of taxable property valuations in any county including all or part of the urban renewal area subject to division of valuation for assessment under paragraph (a) of this subsection (9) ... the portion[ ] of valuation[ ] for assessment ... under ... subparagraph[ ] (I) ... of said paragraph (a) *shall be proportionately adjusted in accordance with such reassessment or change*.

§ 31-25-107(9)(e) (emphasis added).

¶ 110 The URL does not specify precisely how county assessors should proportionately adjust the base and increment during the general reassessment of taxable property. Rather, the URL delegates that authority to the Administrator. Specifically, section 31-25-107(9)(h) provides:

> The manner and methods by which the requirements of this subsection (9) are to be implemented by county assessors shall be contained in such manuals, appraisal procedures, and instructions, as applicable, that the property tax administrator is authorized to prepare and publish pursuant to section 39-2-109(1)(e), C.R.S.

II. Analysis

¶ 111 The majority concludes that the Administrator's methodology for calculating TIF revenues is contrary to law because "the Reference Library's differential treatment of direct and indirect benefits does not effectuate the central purpose of the URL, is not supported by the text of the URL, and is contrary to case law interpreting the URL." *Supra* ¶ 97. I respectfully disagree.

¶ 112 It is true that the URL makes no distinction between direct and indirect benefits in valuing taxable property in TIF areas. But as the district court observed, "the URL does not contain an[y] allocation methodology" but rather "expressly dictates that the [Administrator] shall specify how Assessors perform the allocation." *See* § 31-25-107(9)(h). Pursuant to section 31-25-107(9)(e), the Reference Library provides that "whenever there is a general reassessment of property, the base and increment values are proportionately adjusted in accordance with the reassessment." 2 Div. of Prop. Tax'n, Dep't of Loc. Affs., *Assessors' Reference Library* § 12, at 12.13 (rev. Oct. 2021). It then provides as follows:

> Non-reassessment changes are *property specific* and affect the increment only. Value changes to specific properties are caused by one or more of three events:
>
> ***18** 1) Changes to the physical characteristics of a property
>
> 2) Changes to the legal characteristics of a property
>
> 3) Changes in a property's use
>
> Typically these events follow the undertaking of a URA [urban renewal authority].... The value, if any, attributed to new development is evidenced by these events. A non-reassessment event that impacts the value of property in a TIF area is attributable to the increment, whether or not such change is demonstrated to be directly caused by undertakings of the URA.... *However, indirect benefits resulting from market perceptions that*

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> *properties located in a TIF plan are more or less desirable/valuable are evidenced when any sort of reassessment event occurs, and such event applies proportionately to both the base and increment.*

2 *Assessors' Reference Library* at 12.15 (emphasis added).

¶ 113 I cannot say that this method of valuing taxable property — allocating value changes directly caused by the urban renewal project to the increment while allocating value changes caused by general market conditions proportionately to the base and increment during the reassessment — is not authorized by the URL. Section 31-25-107(9)(e) does not explain how the value changes "shall be proportionately adjusted" during the reassessment. And this "statutory language is susceptible to more than one reasonable interpretation." *El Paso Cnty. Bd. of Equalization v. Craddock*, 850 P.2d 702, 705 (Colo. 1993) (giving deference to the property tax administrator's interpretation when the statutory language is susceptible to more than one reasonable interpretation). Thus, in my view, nothing in the URL precludes the Reference Library's differential treatment of direct and indirect benefits.

¶ 114 Meanwhile, the URL entrusts the Administrator with the responsibility for developing "the manner and methods by which the requirements of this subsection (9) are to be implemented." § 31-25-107(9)(h). Pursuant to this authority, the Administrator developed and adopted the Reference Library. And our supreme court has determined that the Administrator's interpretation of the law she is tasked with applying is entitled to deference. It explained,

> When construing a statute, courts afford deference to the interpretation given the statute by the officer or agency charged with its administration. Courts, of course, must interpret the law and are not bound by an agency decision that misapplies or misconstrues the law. An administrative agency's construction should be given appropriate deference, but it is not binding on the court. Administrative interpretations are most useful to the court when the subject involved calls for the exercise of technical expertise which the agency possesses and when the statutory language is susceptible to more than one reasonable interpretation.

Craddock, 850 P.2d at 704-05 (citations omitted).

¶ 115 The majority acknowledges that "[w]e are unable to determine exactly what the Reference Library's 'proportionate allocation' means or how it is effectuated." *Supra* ¶ 90. That is why we should exercise caution. Because the intricacies of TIF are complex and "call[ ] for the exercise of technical expertise which the [Administrator] ... possesses," *Craddock*, 850 P.2d at 705, we should defer to the Administrator, who has the constitutional authority to administer the property tax laws in this state, Colo. Const. art. X, § 15(2).

***19** ¶ 116 Nor do I believe that the Reference Library's distinction between direct and indirect benefits is contrary to case law interpreting the URL. In *Denver Urban Renewal Authority v. Byrne*, 618 P.2d 1374, 1382 (Colo. 1980), the supreme court indicated that the general reassessment provision ensures that property tax revenues related to a TIF project are allocated to the urban renewal authority, while revenues *not* due to a project are not. *Id.* Specifically, the court stated as follows:

> To ensure that tax revenues are allocated to DURA [Denver Urban Renewal Authority] based solely upon the increased valuation of property *because of the project*, section 31-25-107(9)(e) provides that in the event there is a general reassessment of taxable property within any county including any part of the urban renewal project, the valuation of property within the project area shall be proportionately adjusted in accordance with such assessment. The tax allocation structure has been carefully drafted so that *there is a direct relationship between the increased valuation of property within the project area*, and thus, increased ad valorem tax revenues, *and the project financed by the bond issue*.

Id. (emphasis added); *see also* *Bd. of Comm'rs v.*

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City of Broomfield, 7 P.3d 1033, 1036 (Colo. App. 1999). The court further stated that “[t]he portion of tax revenues allocated to DURA represent the amount generated by virtue of increased property valuation which would not have existed *but for* the project.” *Byrne*, 618 P.2d at 1387 (emphasis added).

¶ 117 Though the majority is correct that *Byrne* “was addressing whether TIF was constitutional, not the question of statutory interpretation presented to us,” *supra* ¶ 95, and it used the terms “project area” and “plan” loosely, in my view, *Byrne* is still consistent with the Reference Library’s differential treatment of direct and indirect benefits. While value changes directly caused by the urban renewal project are allocated to the increment, value changes caused by general market conditions — i.e., market perceptions that properties located in a TIF plan are more or less desirable or valuable — are proportionately allocated to the base and increment. 2 *Assessors’ Reference Library* at 12.15.

¶ 118 I also disagree with the majority’s conclusion that the Reference Library’s distinction between direct and indirect benefits eviscerates the URL’s express purpose of rehabilitating slum or blighted areas. The majority concludes that the Reference Library’s “proportionate” allocation of indirect benefits “results in a very small percentage (or sometimes none) of the increase in value within urban renewal areas being allocated to the urban renewal authority.” *Supra* ¶ 79. But the Assessor explained why there has been little or no allocation of the indirect benefits to the renewal authority:

> It is important to remember that the URL’s purpose is to fix blight in urban areas, § 31-25-102, C.R.S. and in several of the TIF areas AURA [Aurora Urban Renewal Authority] presents, nothing has been done to fix this blight. For example, in TIF Area 4406 ..., AURA itself confirmed that no redevelopment has even started in this area despite the TIF being established in 2014.... Similarly, for TIF Area 4407 ..., AURA confirmed that no redevelopment occurred on this property between the TIF area’s establishment in 2014 until sometime after a redevelopment contract was signed in April 2019.

***20** Thus, the Assessor warns, “an urban renewal authority could simply attach TIF provisions to tracts of property and then do nothing, while reaping the benefit of market value increases.”

¶ 119 While I do not purport to know the best method for calculating TIF revenues or the best way to incentivize urban renewal, I do not believe we have been tasked with that responsibility. The General Assembly has instead delegated that responsibility to the Administrator. § 31-25-107(9)(h); § 39-2-109(1)(e). And Chapter 12 of Volume 2 of the Reference Library — the TIF methodology — was reviewed and approved by the Board at a public hearing on October 5, 2016, and later reviewed by the General Assembly for compliance with the URL. As I see it, the majority’s disapproval of the Reference Library’s distinction between direct and indirect benefits crosses the line into the area of public policy. *See* *Town of Telluride v. Lot Thirty-Four Venture, L.L.C.*, 3 P.3d 30, 38 (Colo. 2000) (“It is not up to the court to make policy or to weigh policy.”).

¶ 120 I therefore respectfully concur in part and dissent in part.

All Citations

--- P.3d ----, 2022 WL 67850, 2022 COA 5

Footnotes

[1] The defendants argue that a mixed standard of review applies. The *Levine v. Katz* division explained,

> [a]n appellate court applies a mixed standard of review to motions to dismiss for lack of subject matter jurisdiction. The trial court’s factual findings are reviewed under the clear error standard and are binding unless so clearly erroneous as not to find support in the record. But the trial court’s legal conclusions are reviewed do novo.

192 P.3d 1008, 1012 (Colo. App. 2006) (citations omitted). In ruling on the defendants’ motion to dismiss, the district

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court did not hold an evidentiary hearing or make factual findings. Instead, the district court decided this question on the basis of the plaintiffs' complaint. Therefore, there are no adjudicated facts to review for clear error. Instead, the question is one of law, which we review de novo. *Ainscough v. Owens*, 90 P.3d 851, 854 (Colo. 2004).

2 The Administrator further argues that the Metro Districts have not shown how their alleged injury arises from the actions of the Administrator. The Administrator prepares and publishes the manner and methods by which the Assessor calculates the base value and incremental revenue. § 31-25-107(9)(h), C.R.S. 2021. The Assessor is required by law to follow the Reference Library. *Huddleston v. Grand Cnty. Bd. of Equalization*, 913 P.2d 15, 17 (Colo. 1996). Accordingly, the Metro Districts' alleged injury arises from the Reference Library as published by the Administrator. So, we reject this argument.

3 We note that United States Court of Appeals for the Tenth Circuit recently reframed the political subdivision standing doctrine as a merits issue rather than a threshold jurisdictional question. *Kerr v. Polis*, 20 F.4th 686 (10th Cir. 2021). We remain bound by the framework adopted by the Colorado Supreme Court in *Martin v. District Court*, 191 Colo. 107, 109, 550 P.2d 864, 866 (1976). *See In re Estate of Ramstetter*, 2016 COA 81, ¶ 40, 411 P.3d 1043.

4 We directed the parties to address the following questions at oral argument. They did so.

1. What is the statutory support, if any, for the distinction between direct and indirect benefits made in the *Assessors' Reference Library* (ARL)? *See* 2 Div. of Prop. Tax'n, Dep't of Loc. Affs., *Assessors' Reference Library* § 12, at 12.15 (rev. Oct. 2021).
2. Is that distinction permitted by the Urban Renewal Law?
3. Assume that properties are in a blighted area and that an urban renewal plan is adopted for that area. After the urban renewal plan is adopted, but before any construction or remediation, the properties in the urban renewal area increase substantially in value. Assume further that other than the adoption of the urban renewal plan, there is no explanation for the increase in value (i.e., comparable properties adjacent to the plan area have not significantly increased in value). What is the mechanism that allows little to no appreciation to be attributed to the Increment Value under these circumstances?
4. Whatever that mechanism may be, is it supported by law?

5 The Deputy Director of the Division of Property Taxation attested by affidavit that the 2016 revisions to Volume 2, Chapter 12 of the Reference Library "were reviewed and approved by the Office of Legislative Legal Services." The record does not reflect what this review consisted of, the standard of review applied, or the results of the review. More importantly, as discussed above, the allocation procedures amended in 2016 are different from the allocation procedures challenged on appeal. The record does not reflect whether the currently challenged allocation procedures ever were reviewed or approved by the Office of Legislative Legal Services.

6 We likewise conclude that the Assessor's reliance on *Board of Commissioners v. City of Broomfield*, 7 P.3d 1033, 1036 (Colo. App. 1999), is misplaced. The *City of Broomfield* division held that the county was not deprived of property tax revenue because "[o]nly the increases in the value of a property over the assessed base values go to the renewal authority." *Id.* The Reference Library's distinction between direct and indirect benefits goes beyond ensuring that the county receives all the tax revenue it would be entitled to but for the urban renewal plan. Instead, this distinction creates a windfall for counties who reap the indirect benefits of an urban renewal plan at the expense of the viability of TIF and urban renewal.

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AURA Flash Report

FOR DISCUSSION PURPOSES ONLY
UNOFFICIAL & UNAUDITED

Balances as of December 31, 2021

CASH & INVESTMENTS

Wells Fargo Bank		Account Balance	Hold	Net to AURA
	General - Checking (0193)	1,478,784	-	1,478,784
	Ralston Fields - Checking (4061)	2,661,067	-	2,661,067
	Ralston Fields Investments (9353)	358,256	-	358,256
	Olde Town Station - Checking (0895)	1,307,435	-	1,307,435
	Village Commons - Checking (0887)	1,108,646	-	1,108,646

First Bank of Arvada			% change from prior period	
1.50%	CD Maturity 10/11/2022 (4548)	337,255	0.00%	337,255

CSIP				
	Ralston Fields Fund (9003)	1,055,986	0.0018%	1,055,986

NET CASH AVAILABLE TO AURA **8,307,429**

REAL ESTATE OWNED

Date Acq.	Name	Address	Purchase Price	Debt/Discount	Net Value
2016	Arvada Square	9465 Ralston Road	4,963,065	4,963,064	1
2020	Gas Station	9205 W 58th Ave	3,000,000	2,999,990	10
2020	City Stores	5790 Garrison St	10	0	10
2021	IRG Outparcel	9250 W 58th Ave	1,000,000	0	1,000,000

NET VALUE OF REAL ESTATE OWNED **1,000,021**

LONG TERM PAYABLES

Loan	Loan Start Date / Term Date	Original Loan Balance	Payments	Current Loan Balance
Arvada Square	June 1, 2016 / June 1, 2028	5,000,000	1,178,323	3,821,677
Brooklyn's	January 1, 2016 / January 1, 2030	2,745,000	1,183,562	1,561,438
City of Arvada (Ralston Rd Streetscape)	2020	3,500,000	3,500,000	0
Tabernacle - Underground Utilities	2021	350,000	0	350,000
Wheat Ridge	2006/2024	1,800,000	1,400,000	400,000

NET LONG TERM PAYABLES **$6,133,115**

//

GROSS INCOME & EXPENSES BY FUND As of December 31, 2021

	2021 BUDGET Revenue	2021 BUDGET Expenses	Actual Revenues YTD	Actual Expenses YTD
Ralston Fields	4,393,000	3,056,000	6,761,077	2,551,776
Olde Town Station	1,180,000	1,430,000	1,159,399	1,238,635
Jefferson Center	12,106,000	12,106,000	2,535,092	2,377,586
Northwest Arvada	11,000,000	11,000,000	14,735,426	14,276,144
Village Commons	606,000	253,346	670,410	270,443
TOTALS	**29,285,000**	**27,845,346**	**$25,861,404**	**$20,714,584**

GENERAL FUND EXPENSES As of December 31, 2021

	2021 Budget	Expended YTD
Operating Expenses	585,565	544,400
TOTAL EXPENSES	**$585,565**	**$544,400**