

# AGENDA ITEM #6.

## Rainbow Agenda #4

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### BROWN RANCH ANNEXATION AGREEMENT

THIS ANNEXATION AGREEMENT ("Agreement") is made and entered into this \_\_\_ day of \_\_\_\_\_, 2023, by and between the CITY OF STEAMBOAT SPRINGS, a Colorado municipal corporation ("City") and the Yampa Valley Housing Authority, a multi-jurisdictional housing authority ("YVHA").

WHEREAS, YVHA owns the real property described in Exhibit A ("Brown Ranch"), which consists of approximately 420 acres; and

WHEREAS, Brown Ranch is contiguous with the city limits and within the Urban Growth Boundary; and

WHEREAS, YVHA filed a Petition for Annexation with the City on October 18, 2022, to annex Brown Ranch into city limits; and

WHEREAS, the City has determined that it would be in the best interest of the public health, safety, and welfare of its citizens to impose certain terms and conditions on YVHA in connection with the annexation of Brown Ranch to the City;

NOW, THEREFORE, in consideration of the recitals, promises, and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.** As used in this Agreement, unless the context clearly requires otherwise:

"Annexation Ordinance" shall mean the ordinance adopted by the City Council of the City of Steamboat Springs pursuant to the Municipal Annexation Act of 1965 (Section 31-12- 101, et seq., C.R.S.) officially annexing the Property into the City of Steamboat Springs.

"Applicable City Ordinances" shall mean all ordinances of the City which regulate the development, subdivision and use of the Property, as in effect from time to time.

"Regulating Plan" shall mean document which establishes density, uses, patterns, open space and parks, and primary streets and their general locations within the Property, to be approved by the City pursuant to the requirements and procedures set forth in the TND Standards in effect as of the date this annexation becomes effective.

**[TO SUPPLEMENT AS NEEDED]**

**2. POST ANNEXATION LAND USE APPROVAL PROCESS.**

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- Commented [df1]: Approved in concept February 15 BRAC meeting, but only as to the general plan of development 3.A, 3.B, 3.C, 3.D

**3. GENERAL PLAN OF DEVELOPMENT.**

**A. Unit Types & Numbers.**

YVHA may develop up to 2,264 residential units at Brown Ranch through full build-out. YVHA may develop up to 419,000 square feet of non-residential uses at Brown Ranch.

Brown Ranch shall generally consist of four neighborhoods, currently identified by letter. Neighborhood A shall consist of 400 to 480 Units. Neighborhood B shall consist of 330 to 360 Units. Neighborhood C shall consist of 1030 to 1070 Units. Neighborhood D shall consist of 480 to 510 Units.

The contemplated unit composition at full build-out will consist of 1,486 multi-family units (65.5% of total units), 484 single-family attached units (21.5% of total units), and 294 single-family detached units (13% of total units).

	PROGRAM		Phase 1	Phase 2	Phase 3	Total per type
			# UNITS			
RESIDENTIAL	Multi-family	Rental	593	221	221	1486
		Condo	179	136	136	
		<b>Sub-Total</b>	<b>772</b>	<b>357</b>	<b>357</b>	
	Single Family Attached	Rental	126	46	46	484
		Owner	104	81	81	
		<b>Sub-Total</b>	<b>230</b>	<b>127</b>	<b>127</b>	
Single Family Detached	Rental	28	11	10	294	
	Owner	94	76	75		
	<b>Sub-Total</b>	<b>122</b>	<b>87</b>	<b>85</b>		
<b>Total by Phase</b>			<b>1124</b>	<b>571</b>	<b>569</b>	<b>2264</b>

	PROGRAM		Building Type	Phase 1	Phase 2	Phase 3	Total per type
				Area in square feet			
COMMERCIAL / COMMUNITY	Grocery	Mixed Use	15,000				15,000
	Retail Space (coffee, restaurant, etc)	Mixed Use	48,000	22,000	26,000		96,000
	Office Space/ Non-Profit Center	Mixed Use	10,000	8,000	10,000		28,000
	Childcare accepting CCAP	Mixed Use	5,000		5,000		10,000
	Fire Station	Free Standing		50,000			50,000
	K-8 School (site area)	Free Standing		200,000			200,000
	Unspecified Community Program	TBD		10,000	10,000		20,000
	<b>Total by Phase</b>			<b>78,000</b>	<b>290,000</b>	<b>51,000</b>	<b>419,000</b>

The unit numbers and composition outlined above are based upon current assumptions about housing need, community preferences, and available subsidies. It is YVHA's intention the

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unit numbers, composition, and size of non-residential uses, will be updated over time to account for changes in local housing need. Based upon the same, YVHA may seek to amend the Regulating Plan consistent with the Applicable City Ordinances, including seeking to add additional Units or square feet of non-residential uses to respond to changes in demand.

**b. B. Phasing Plan**

The Brown Ranch phasing plan is shown in the attached Exhibit \_\_\_\_. Phase 1 will consist of between 1,100 and 1,200 Units and XXX square feet of non-residential uses. Phase 2 shall consist of between 550 and 600 Units and YYY square feet of non-residential uses. Phase 3 shall consist of 550 to 600 Units and ZZZ square feet of non-residential uses.

Unit composition and density may be shifted between phases during the development approval process. YVHA may, in response to market conditions, funding, development capacity, and site conditions, seek to amend the Regulating Plan consistent with the Applicable City Ordinances.

**c. C. Parks, Trails, and Open Space**

YVHA shall provide at least 46.1 acres of parks, as generally shown in the attached Exhibit \_\_\_\_, or as may be amended through the development review process.

At least 68.6 acres of Brown Ranch shall be designated as Open Space through the development approval process, as generally shown on the attached Exhibit \_\_\_\_. The specific location of Open Space shall be determined through the development review process.

YVHA shall provide trails as generally shown on the attached Exhibit \_\_\_\_. The specific location and character of trails shall be determined through the development review process.

Parks, trails, and open space shall be phased with the development of each Neighborhood, and as the CDC requires.

Dedication and maintenance provisions for Brown Ranch parks, open space, and trails are provided for in Section 4 below.

Brown Ranch will not be subject to any further requirements for the provision of parks, open space, or trails as a condition of any City approval during the vesting term provided in Section \_\_\_\_, or any future extension of such term.

**d. D. Wildfire Mitigation**

Health Equity, Sustainability, and Resiliency Guidebook will impose a private regulatory scheme on development within Brown Ranch. The Guidebook will include recommendations identified in the *Increasing Wildfire Resilience at Brown Ranch* report prepared by the Community Wildfire Planning Center. These strategies may include 1) incorporating design features that

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reduce wildfire susceptibility in the Home Ignition Zone; 2) managing open space vegetation in strategic locations to support fire suppression tactics and further support defensible space; 3) providing adequate setbacks on peripheral edges of all neighborhoods from hazardous fuels and terrain features; 4) planning for the strategic location of trail networks to support fire suppression resource access and tactics; and 5) planning for evacuation opportunities.

Maintenance provisions for the wildfire mitigation measures are provided for in Section 4 below.

**e. E. On-Site Public Infrastructure Plan**

YVHA shall pay all costs for the design and construction of all on-site public improvements to serve Brown Ranch, including, but not limited to, roads, curbs, gutters, sidewalks, sanitary and drainage sewers, water, and street lights, in accordance with applicable City or public utility company standards and specifications. YVHA shall dedicate to the City and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said public improvements, including public streets, and in addition shall convey the public improvements to the appropriate entity upon completion and acceptance of the improvements.

**[WATER PLACEHOLDER]**

All Units within Brown Ranch shall pay Plant Investment Fees (“tap fees”), in the amount charged for other properties within the City’s water and wastewater district, with such fees being due prior to the issuance of a building permit, as provided in the Applicable City Ordinances, except as noted in Section 3.G.3 below. Brown Ranch will not be subject to any further sewer related payments as a condition of any City approval during the vesting term provided in Section \_\_\_\_, or any future extension of such term.

YVHA shall construct stormwater systems within Brown Ranch in conformance with City Engineering Standards.

YVHA shall construct multi-modal transportation within Brown Ranch in conformance with City Engineering Standards.

The Parties agree that YVHA shall be entitled to reimbursement of certain costs of construction of certain public improvements. The City agrees that it will require, as a condition of annexation of any portion of the West Steamboat Area Plan adopted June 19, 2006 (the “Benefited Property”) that YVHA will be reimbursed by the developer of such portion of the Benefited Properties a proportionate share of the cost of such infrastructure which serves a Benefited Property. The proportionate share shall be reasonably determined by the City Council at the time of annexation and as a condition of annexation of a Benefitted Property based upon the benefits received by the Benefited Property, which shall be determined, without limitation, by reference to:

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the cost savings to the Benefited Property by YVHA's construction of the additional infrastructure; age and physical condition of the infrastructure; and the length and capacity of utilities and roadways infrastructure used by the Benefited Property. Nothing in this Paragraph shall prohibit YVHA from making application to the City for a Public Improvements Reimbursement Agreement pursuant to the requirements of the City's Community Development Code for reimbursement of expenses not otherwise reimbursable under this Paragraph. This provision shall not apply to any property annexed pursuant to an annexation ordinance adopted more than twenty (20) years from the effective date of the ordinance annexing the Brown Ranch.

Commented [df2]: What parcels do we think will be benefitted and what types of improvements are going to be the subject of reimbursement?

~~Contributions from YVHA for off-site infrastructure improvements will be paid for using funding from the Short-Term Rental Tax.~~

The terms of the provision of City services related to the public infrastructure, and the maintenance of same, are provided for in Section 4 below.

#### **F. Off-site Public Infrastructure Plan**

Commented [df3]: This section needs review. It was not the subject of discussion at the Feb. 15, 2023 BRAC meeting

Except as otherwise provided in this Annexation Agreement as to offsite water and wastewater improvements and other offsite improvements, ~~Contributions from YVHA for off-site infrastructure improvements will be paid for using funding from the Short-Term Rental Tax.~~

#### **G. Off-site Water and Wastewater Facilities**

1) The City will provide water and wastewater services through its existing water and wastewater utility, which presently operates as an enterprise fund for purposes of the Taxpayers Bill of Rights ("TABOR"), Article X, Section 20 of the Colorado Constitution and which the City intends to continue to operate as an Enterprise Fund for purposes of TABOR.

2) The parties acknowledge that the determination as to whether the City has a reliable and secure water supply to serve the Brown Ranch and whether the City can make the determination regarding adequacy of the City's water supply required by C.R.S. 29-20-301, et. seq. and Section 25-78 of the City's municipal code depends on the completion of a Water Demand Analysis, which is expected to be complete in May, 2023. Based on current information, the parties acknowledge that the provision of water to Brown Ranch by the City will require the construction of the following four additional elements to the City's water infrastructure:

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a) The West Area Water Tank booster station, which must be constructed and accepted prior to the occupancy of any units at the Brown Ranch. This project will be constructed at City expense at an estimated cost of \$1,200,000.

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b) US Hwy 40 delivery pipeline, which must be constructed and accepted prior to the occupancy of any units at the Brown Ranch. This project is underway and will be constructed at City expense at an estimated cost of \$1,000,000.

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c) New water treatment facility, diversion system, pumps, raw water delivery line, clearwell, and treated water distribution lines (together "Elk River Water Treatment Facility"), which must be constructed and accepted prior to the issuance of building permits at Brown Ranch that would cause Brown Ranch water demand to exceed 800 EQRs.

i) Estimated costs of construction are \$40,000,000-\$58,000,000.

ii) The parties' current estimate is that construction could begin at the earliest in 2028 with the treatment facility completed and operational by 2030.

iii) The parties acknowledge that the City does not own a site for this treatment facility or the necessary easements or property rights for distribution to Brown Ranch.

iv) The parties acknowledge that the City owns certain water rights with authorized points of diversion and related storage rights that are adequate to provide sufficient raw water to the proposed treatment plant to allow for the full development of the Brown Ranch as described in this Section 3.

d) Onsite distribution facilities. Construction of these facilities shall be the responsibility of YVHA as provided in Subsection 3.e.

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3) The parties acknowledge that the Elk River Water Treatment Facility will benefit the existing City water utility customer base by providing needed resiliency and redundancy to the City's existing treatment facilities. The parties intend to allocate responsibility for the costs of constructing the Elk River Water Treatment Facility by modelling the distribution throughout the City system of water from that source and allocating costs on a pro rata basis. The model is expected to be complete in early May.

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a) YVHA shall be responsible for paying that share of the costs of the Elk River Water Treatment Facility allocated to the Brown Ranch project on the following terms:

i) A surcharge on plant investment fees (i.e. tap fees) collected by the City for development at Brown Ranch attributable to the Elk River Water Treatment Facility, the amount of which shall be determined and adjusted from time to time by the City through periodic rate studies.

ii) YVHA shall be responsible for payment of the difference, if any, between the Brown Ranch payment share and anticipated plant investment fee surcharge revenues from YVHA revenue including without limitation YVHA tax revenues, grant proceeds, contributions from the City, and any other source in YVHA's discretion.

iii) The timing of payments by YVHA shall be as determined by future negotiations of the parties.

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b) City shall be responsible for payment of that share of the costs of the Elk River Water Treatment Facility allocated to City water utility customers within the current district boundaries from revenue sources to be determined by the City, including without limitation City utility plant investment fees collected from City utility customers not located at the Brown Ranch.

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4) YVHA shall implement a water conservation and efficiency plan outlining commitments.

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a) The plan shall meet or exceed the City's policy of a 10% reduction in treated water use in ten years.

b) The parties' staffs will collaborate to develop a water conservation and efficiency plan including, without limitation, the following elements:

i) Significant reduction in private yards in favor of common spaces that are centrally managed;

ii) Integrate water conservation with land use planning;

iii) water budget agreement and monitoring plan (draft document to be provided by Julie Baxter/City)

iv) Water-efficient building practices such as low flow fixtures;

v) Site design that preserves areas important for water quantity or quality;

vi) Water re-use capabilities.

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5) YVHA shall comply with the City's water rights dedication policy set forth in Section 25-77 of the City's municipal code. The parties acknowledge that YVHA does not have water rights to dedicate and that payment of a fee-in-lieu is contemplated by the policy.

6) The parties acknowledge that the provision of wastewater services to Brown Ranch by the City will require the following offsite improvements:

a) Connection from onsite collection facilities in the Brown Ranch "West Basin" to the existing City trunk line running from Sleepy Bear/KOA to the existing wastewater treatment plant. The parties acknowledge that existing facilities provide the necessary connection from the Brown Ranch "East Basin". Costs of constructing these facilities shall be the responsibility of YVHA.

b) Expanding the capacity of the existing wastewater treatment facility.

i) Governed by state law, design must commence when plant is at 80% capacity, construction to commence when plant is at 90% capacity, plant currently at 73%.

ii) Projections based on 200 EQRs/year in Brown Ranch starting in 2026 triggers design requirement in 2027, construction 2033.

iii) These improvements to be funded by City utility fund, monthly service fees are not expected to increase as a result of the expansion project. There is potential for plant investment fees to increase as a result of the expansion project. The 2024 rate study will determine whether plant investment fees will increase and, if so, by how much.

iv) Projections assume no changes in relevant regulatory requirements.

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#### £ **H. Private Infrastructure Plan**

YVHA shall pay all costs for the design and construction of all utility services necessary to serve the Brown Ranch, including, but not limited to, electricity, telephone, gas, and cable



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television service, in accordance with applicable City or public utility company standards and specifications. YVHA shall dedicate to the City and applicable public utility companies without charge, free and clear of all liens and encumbrances, those easements and rights-of-way necessary for installation and maintenance of said utility lines. Any contribution for offsite electrical infrastructure will be agreed upon between YVHA and YVEA and paid for by YVHA and/or the Short-Term Rental Tax.

The construction of utility services shall be phased with the development of each Neighborhood, and as the CDC requires.

The terms of the provision of City services related to the utility services are provided for in Section 4 below.

- 4. **CITY SERVICES/OPERATIONS/MAINTENANCE RESPONSIBILITIES.**
- 5. **AFFORDABILITY/ATTAINABILITY OF HOUSING.**
- 6. **EXACTIONS/DEDICATION OF LAND.**
- 7. **SUSTAINABILITY MEASURES.**
- 8. **VESTED PROPERTY RIGHTS.**

a. **Vested Property Rights.** The City will approve the creation of vested property rights for the Property pursuant to the Vested Property Rights Act, C.R.S. §24-68-101 et seq. In the event of conflict between this Agreement and the Vested Property Rights Statute or Municipal Code, this Agreement shall prevail. In recognition of the size of the development contemplated under this Agreement, the substantial investment and time required to complete the development, the potential for phases of the development and the possible impact of economic cycles and varying market conditions during the course of the development, YVHA and the City agree that vested property rights are approved under the following conditions: the rights to be vested shall extend only to the permitted uses and densities set forth in the Regulating Plan adopted and approved by the City as described in Paragraph \_\_\_\_ and to \_\_\_\_\_ and other requirements set forth in this Agreement.

b. **Vesting Term.** The term of vesting shall be \_\_\_\_ years commencing upon the date of recording the Annexation Ordinance and Map.

c. **Site-Specific Development Plans.** YVHA and the City agree that the Regulating Plan constitutes an approved "site specific development plan" as defined in the Vested Property Rights Statute, and that pursuant thereto, YVHA and its successors and assigns shall have vested rights to undertake and complete the development and use of the Property under the terms and conditions thereof during the vesting term established in Paragraph (b) above. The vesting term shall be memorialized in a Development Agreement in connection with the approval of the Regulating Plan ("Regulating Plan Development Agreement").



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d. **Rights Not Vested.** The establishment of rights vested under this Agreement, the Regulating Plan, and Regulating Plan Development Agreement shall not preclude the application by the City of City ordinances and regulations, including, without limitation, the following:

- i. City building, fire, plumbing, engineering, electrical, and mechanical codes and other similar technical codes and standards of the City;
- ii. City architectural, landscaping, and other development standards that are not inconsistent with the uses and densities permitted by the approved Regulating Plan;
- iii. City regulations regarding the subdivision of land to the extent the same do not conflict with the uses and densities permitted by the approved Regulating Plan;
- iv. Traditional Neighborhood Development standards to the extent the same do not conflict with the uses and densities permitted by the approved Regulating Plan;
- v. Applicable federal regulations;
- vi. Any other general City ordinance or regulation that does not conflict with the uses and densities permitted by the approved Regulating Plan.

9. **TERM.**

10. **ANNEXATION CONTINGENCIES.**

Final approval of the Annexation Ordinance shall not be deemed to have occurred if on or before the thirtieth (30th) day following the effective date of the Annexation Ordinance either a) legal proceedings are commenced challenging the Annexation Ordinance or b) a petition is submitted to the City Clerk for a referendum on the Annexation Ordinance. Either party may, but shall have no obligation, to defend legal proceedings concerning the validity of the Annexation Ordinance.

In the event of a legal challenge and/or referendum, final approval shall occur upon final and non-appealable resolution of legal proceedings and/or referendum results affirming annexation of the Property. The annexation of the Property to the City shall not be effective until the occurrence of final approval.

If a referendum challenge to the Annexation Ordinance succeeds, this Agreement and all provisions contained herein shall be null and void and of no further effect. In the event the Annexation Ordinance or any portion thereof is voided by the final action of any court, this Agreement and all provisions contained herein shall be null and void and of no further effect unless the parties agree in writing to ratify the Agreement and seek to cure the legal defect(s) that resulted in the court action. If the parties agree in writing that such a cure is successful, YVHA may re-apply for annexation.

YVHA may withdraw the petition for annexation and terminate this Agreement if any legal challenge remains unresolved one (1) year after the effective date of the Annexation Ordinance. City shall not be responsible for processing applications for land use approvals relating to the

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Property and YVHA shall not be responsible for making payment, constructing improvements, or dedicating interests in real property to the City during the pendency of any legal challenge to or referendum regarding the Annexation Ordinance.

## 11. MISCELLANEOUS.

a. **Effective Date.** This Agreement is contingent upon the City approval of the annexation and shall become effective as provided for in Paragraph \_\_.

b. **Parties' Authority.** The City and YVHA represent that each has the authority to enter into this Agreement according to applicable Colorado law and the City's Home Rule Charter and Ordinances, and each represents that the terms and conditions hereof are not in violation of any agreement previously entered into by such party. This Agreement shall not become effective until a resolution or other necessary authorizations for the execution of the Agreement are effective.

c. **Recording.** This Agreement shall be recorded in the Routt County Clerk and Recorder's Office in order to put prospective purchasers of the Property or other interested parties on notice as to the terms and conditions contained herein.

d. **Entire Agreement.** This Agreement and the exhibits hereto represent the entire understanding between the parties, and no other agreement concerning the Property, oral or written, made prior to the date of this Agreement, which conflicts with the terms of this Agreement shall be valid as between the parties.

e. **Modification.** This Agreement may be modified by the written agreement of the City and YVHA. No approval of a modification to this Agreement shall be required of any owner or person or entity holding any interest in any portion of the Property unless such right of approval has been specifically assigned to such owner, person, or entity in a written instrument of assignment, but nothing herein shall prohibit the City from requiring the approval of any such amendment in appropriate cases by other owners within the Property as a condition of the City agreeing to such amendment. An amendment to the TND zone district regulations, Regulation Plan, or City ordinances or other City regulations shall not constitute or require an Amendment to this Agreement. All amendments to this Agreement shall be in writing, shall be recorded with the County Clerk and Recorder of Routt County, Colorado, shall be covenants running with the land, and shall be binding upon all persons or entities having an interest in the Property, unless otherwise specified in the amendment.

f. **Additional Remedies.** If at any time any material part hereof has been breached by YVHA, the City may, in addition to other remedies, withhold approval of any or all building or other permits applied for by YVHA on its Property, or withhold issuance of certificates of occupancy, until the breach or breaches has or have been cured.

g. **Binding Effect.** Once the contingencies set forth in Section \_\_ have been satisfied, the agreements and covenants as set forth herein shall be binding upon YVHA and its successors

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and assigns, and shall constitute covenants or servitudes that shall touch, attach to, and run with the land that constitutes the Property. The burdens and benefits of this agreement shall bind and inure to the benefit of all persons who may hereafter acquire an interest in the Property, or any part thereof. YVHA shall as a condition of approval of the Annexation Ordinance execute and record a document acknowledging and ratifying the binding effect of this Annexation Agreement on its successors and assigns to the Property.

h. **Severability.** In case one or more of the provisions contained in this Agreement shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby.

i. **Incorporation of Exhibits.** Exhibits \_\_ through \_\_, inclusive, which are attached hereto, are incorporated herein by reference.

j. **Attorney's Fees.** If any action is brought in a court of law by either party to this Agreement concerning the enforcement, interpretation or construction of this Agreement, the prevailing party, either at trial or upon appeal, shall be entitled to reasonable attorney's fees, as well as costs, including expert witness' fees, incurred in the prosecution or defense of such action.

k. **Notices.** Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by certified mail, return receipt requested, addressed as follows:

City: Dan Foote  
City Attorney  
City of Steamboat Springs  
137 10th St.  
Steamboat Springs, CO 80487

with copy to: Gary Suitor City Manager  
(which shall not City of Steamboat Springs  
constitute notice) 137 10th St.  
Steamboat Springs, CO 80487

YVHA: Yampa Valley Housing Authority  
Attn: Jason Peasley  
2100 Elk River Road  
Steamboat Springs, CO 80477

with copy to: Elevation Law Group, P.C.  
Attn: George M. Eck III  
P.O. Box 770908  
Steamboat Springs, CO 80487

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Notices mailed in accordance with the provisions of this Paragraph shall be deemed to have been given on the 2nd day following mailing. Notices personally delivered shall be deemed to have been given upon delivery. Nothing herein shall prohibit the giving of notice in the manner provided for in the Colorado Rules of Civil Procedure for service of civil process

l. **Waiver.** The failure of either party to exercise any of its rights under this Agreement shall not be a waiver of those rights. A party waives only those rights specified in writing and signed by either party waiving such rights.

m. **Applicable Law.** This Agreement shall be interpreted in all respects in accordance with the laws of the State of Colorado.

n. **Counterparts.** This Agreement may be executed in several counterparts and/or signature pages and all counterparts and signature pages so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all the parties are not signatories to the original or the same counterpart or signature page.

o. **Paragraph Headings.** Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.

p. **Terminology.** Wherever applicable, the pronouns in this Agreement designating the masculine or neuter shall equally apply to the feminine, neuter and masculine genders. Furthermore, wherever applicable within this Agreement, the singular shall include the plural, and the plural shall include the singular.

q. **Assignment.** The rights and obligations of YVHA under this Agreement may not be assigned without prior written approval of the City, which may be granted or withheld by the City Council acting in its sole and exclusive discretion. Such approval shall not be unreasonably withheld or delayed unless the City Council reasonably believes such denial is justified based upon the reputation, credit, standing, or other similar qualifications of the proposed assignee. The express assumption of any of YVHA's obligations under this Subsection with the written consent of the City will thereby relieve YVHA of such obligations with respect to the matter so assumed and assigned.

r. **No Third-Party Beneficiaries.** Enforcement of the terms and conditions of this Agreement, and all rights of action relating to such enforcement, shall be strictly reserved to the City and YVHA, and nothing contained in this Agreement shall give or allow any such claim or right of action by any other third party. It is the express intent of the City and YVHA that any party other than the City or YVHA receiving services or benefits under this Agreement shall be deemed to be an incidental beneficiary only.

s. **Colorado Constitution, Article X, Section 20.** This Agreement is not intended by the parties to create, and does not create, any multi-fiscal year financial obligation of the City or YVHA. All financial obligations of the City or YVHA hereunder are expressly subject to the

This document is a working draft and reflects the discussions of the parties' BRAC representatives to date. It is subject to change based on the parties' ongoing discussions and review by the parties' respective boards.

annual appropriation of funds by the City Council or the Board of Directors, acting in their sole discretion.

IN WITNESS WHEREOF, the parties have executed this Agreement the date first written above.

[Signature pages follow]

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