

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 27
Series of 2020

TITLE: A RESOLUTION APPROVING AN ENHANCED SALES TAX IMPROVEMENT PROGRAM AGREEMENT WITH GRAMMY'S GOODIES IN THE AMOUNT NOT TO EXCEED \$70,000 OR FOR FIVE YEARS, WHICHEVER SHALL OCCUR FIRST

WHEREAS, Division 4, Section 22-73 of the Wheat Ridge Code of Laws establishes an Enhanced Sales Tax Incentive Program; and

WHEREAS, The purpose of the enhanced sales tax incentive program is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the city; and

WHEREAS, approval of this resolution will stimulate the economy of and within the City, thereby providing employment for residents of the city and others; and

WHEREAS, the improvements will allow further expansion of the goods available for purchase and consumption by residents of the city; and

WHEREAS, the completed improvements will further increase the sales taxes collected by the City, which increased sales tax collections will enable the City to provide expanded and improved municipal services to and for the benefit of the residents of the City; and

WHEREAS, the agreement, attached as **Exhibit 1** has been reviewed and approved by all parties.

NOW, THEREFORE, BE IT RESOLVED by the Wheat Ridge City Council, that:

Section 1. Enhanced Sales Tax Incentive Program Agreement Approved

An Enhanced Sales Tax Incentive Program Agreement with Grammy's Goodies is approved, rebating 50% (1.5 cents) of City incremental sales tax generated for a period of five years or for a total not to exceed amount of \$70,000.

Section 2. Effective Date. This Resolution shall be effective upon adoption.

DONE AND RESOLVED by the City Council this 11th day of May, 2020.



Bud Starker, Mayor

ATTEST


Steve Kirkpatrick, City Clerk



EXHIBIT 1

AGREEMENT PURSUANT TO ENHANCED SALES TAX INCENTIVE PROGRAM

This Agreement Pursuant To Enhanced Sales Tax Incentive Program (this "Agreement") is made and entered into as of the 11th day of May, 2020, by and between GRAMMIES GOODIES LLC located at 4601 Harlan Street, Wheat Ridge, CO 80033, hereinafter referred to as the "Owner" and the CITY OF WHEAT RIDGE, COLORADO, hereinafter referred to as the "City," collectively the "Parties," and each individually, as a "Party."

RECITALS:

Whereas, the City has adopted Chapter 22, Article 69 - 84 of the Wheat Ridge Code of Laws, entitled the Enhanced Sales Tax Incentive Program (the "ESTIP Program"), a copy of which is attached hereto as **Exhibit A**, to encourage, in part, the establishment of retail sales tax generating businesses within the City; and

Whereas, the Owner desires to participate in the ESTIP Program and to share in the enhanced sales tax derived from the property described as a Restaurant, generally located at 4601 Harlan Street in Wheat Ridge, Colorado and more particularly described in **Exhibit B**, attached hereto and incorporated by this reference (the "Property"), for the installation of Public Improvements described in **Exhibit C**, attached hereto and incorporated by this reference (the "Public Improvements") to the extent allowed by this Agreement and the ESTIP Program.

NOW, THEREFORE, in consideration of the foregoing premises and the covenants, promises, and agreements of each of the Parties hereto, to be kept and preformed by each of them, the Parties agree as follows:

1. **Recitals.** The Recitals set forth above are incorporated in this Agreement by reference.
2. **Term.** The term of this Agreement shall commence on the first day of the calendar month following the month in which the Owner receives their Certificate of Occupancy on the Property or November 1, 2020 whichever shall occur first (the "Commencement Date") and shall terminate in five (5) years, unless otherwise provided in this Agreement (the "Term"). The Term of this Agreement shall automatically renew for each additional one year period to the extent required by Section 4(d) hereof.
3. **Application of City Code.** This Agreement is subject to the limitations of the ESTIP Program, as found in the City of Wheat Ridge Code of Laws. In the event of conflicts between this Agreement and the ESTIP Program, the ESTIP Program shall control.
4. **Qualification of Property for the ESTIP Program.** The City agrees that the Property qualifies for the ESTIP Program and the Public Improvements are improvements for public and/or public related purposes that will stimulate the economy

of and within the City, provide employment opportunities for residents of this City and others, expand the goods available for purchase and consumption by residents of the City, and increase sales taxes collected by the City. The City finds the business is reasonably likely to generate enhanced sales taxes of at least One Hundred Twenty Thousand (\$100,000) over the full term of this Agreement. The following provisions shall apply for each year in which the ESTIP Program is in effect for the Property:

- a. Fifty percent (50%) of the “Enhanced Sales Taxes” collected by the City and derived from the Property shall be segregated by the City to be utilized for the ESTIP Program herein established and approved (the “Allocated Revenues”). For purposes of this Agreement “Enhanced Sales Taxes” shall have the meaning set forth in the ESTIP Program at Section 22-75 of the Wheat Ridge Code of Laws.
- b. The amount of Enhanced Sales Taxes shall be calculated as follows: the actual amount of sales taxes collected on the Property during the period for 12-months preceding the issuance of a certificate of occupancy by the City of Wheat Ridge (the “base amount”). The excess of collections in each such year above the base amount shall be the Enhanced Sales Taxes for that year.
- c. The Owner shall share in the Enhanced Sales Taxes derived from the Property and the business located thereon as provided herein.
- d. Enhanced Sales Taxes from the Property shall be shared and the Allocated Revenues shall be disbursed to the Owner on an annual basis with sales taxes collected on and after the Commencement Date. The maximum period of time that this Agreement shall be in effect shall for five (5) years, commencing on the Commencement Date.
- e. The maximum amount of Enhanced Sales Tax shall not at any time exceed \$70,000
- f. This Agreement is a personal agreement between the City and the Owner and does not run with the Owner’s property interest in the land. The obligations, benefits and/or the provisions of this Agreement may not be assigned in whole or in part without the express authorization of the City Council, acting in its sole and exclusive discretion and no third party shall be entitled to rely upon or enforce any provisions hereon. Notwithstanding the foregoing, Owner may assign its interests in this Agreement to an affiliate or to a successor by consolidation. For the purposes of this Paragraph, an affiliate means an entity which controls, is controlled by, or is under common control with the Owner. This Agreement shall never constitute a debt or obligation of the City within any constitutional or statutory provision.
- g. Any Enhanced Sales Taxes subject to the Agreement shall be escrowed in the event there is a legal challenge to the ESTIP Program or to the approval of this Agreement.

- h. At the end of the Term of this Agreement as provided for herein, any monies segregated by the City which have not been expended as hereunder provided may be transferred to another account of the City or used in a manner determined by the City in its sole discretion, excluding any amounts escrowed under Paragraph 4.g above.
- i. From the Enhanced Sales Tax proceeds segregated by the City, the City shall pay to the Owner the actual cost incurred by the Owner for the construction and installation of the Public Improvements beginning at the time that all of the Public Improvements are substantially completed, but not to exceed the Maximum Amount defined in Paragraph 4.e above and set forth in **Exhibit C**.
- j. In order to obtain reimbursement for such actual costs, the Owner shall submit invoices to the City after the Effective Date of this Agreement, the payment of which shall be subject to the City's approval for compliance of the expenditures with this Agreement and the ESTIP Program and the availability of Allocated Revenues. Each invoice presented to the City by the Owner shall be accompanied by an affidavit or other supporting documentation from the general contractor stating:
 - i. that said improvements have been substantially completed pursuant to plans and specifications approved by the City through the issuance of permits and site plan approvals by the City in the ordinary course; and
 - ii. that the Owner has paid the full amount specified on the invoice.
- k. The Owner shall be deemed the "owner or proprietor" of the Property for the purposes of this Agreement and the ESTIP Program, whether or not the Owner owns all or any portion of the Property at any relevant time, since the Owner is coordinating the installation of the Public Improvements.

5. City's Budget Process. Each year, the City Manager shall include in a budget presented to the City Council pursuant to Chapter X, Sec. 10.2 of the Wheat Ridge Home Rule City Charter, the appropriation of the Allocated Revenues for payment to the Owner as provided in this Agreement. Nothing in this Agreement shall be construed as obligating the City Council to appropriate the Allocated Revenues in any fiscal year.

6. No Debt or Pecuniary Liability. Notwithstanding anything in the Agreement to the contrary, the Agreement is specifically subject to annual appropriation of sufficient funds to pay the Allocated Revenue as provided in the ESTIP Program. No multiple year fiscal obligation is created hereby. The decision of the City Council not to appropriate funds in any given year shall not affect, impair or invalidate any of the remaining provisions of this Agreement. None of the obligations of the City hereunder shall be payable from any source other than Enhanced Sales Taxes.

7. **Subordination.** Notwithstanding anything in this Agreement to the contrary, the Owner shall have no right, claim, lien, or priority, in or to the City's sales tax revenue that would be superior to or on parity with the rights, claims, or liens of the holders of any sales tax revenue that would be bonds, notes, certificates, or debentures payable from or secured by any sales taxes, outstanding as of the Effective Date of this Agreement. All rights of the Owner are, and at all time shall be, subordinate and inferior to the rights, claims and liens of the holders of any and all such sales tax revenue bonds, notes, certificates, or debentures, issued by the City and payable from or secured by any sales taxes.

8. **No Covenant to Construct or to Open.** The intent of this Agreement is to provide for Owner's participation in the ESTIP Program, in the event that Owner constructs the Public Improvements. Notwithstanding any provision in this Agreement to the contrary, Owner shall have no obligation under this Agreement to construct the Public Improvements, and in that event, the City shall have no obligation to share any of the Enhanced Sales taxes with Owner.

9. **Remedies.** The Owner waives any constitutional claims against the City arising out of a breach of this Agreement. The Owner's remedies against the City under this Agreement are limited to breach of contract claims. In no event shall the Owner be entitled to a claim, nor shall the City be liable for, any special, exemplary, punitive or consequential damages of any kind, including economic damages or lost profits.

10. **Severability.** It is understood and agreed by the Parties that if any part, term or provision of this Agreement is held by the courts to be illegal or in conflict with any law of the State of Colorado, the validity of the remaining portions or provisions shall not be affected, the rights and obligations of the Parties shall be construed and enforced as if the Agreement did not contain the particular part, term or provision held to be invalid, and the Parties shall cooperate to cure any legal defects in the Agreement or the ESTIP. Should the allocation of the Enhanced Sales Tax, or the payment of the Allocated Revenues be judicially adjudged illegal, invalid or unenforceable under the present or future laws effective during the Term of this Agreement by a court of competent jurisdiction in a final, non-appealable judgment, the Parties shall utilize their best, good faith efforts to restructure this Agreement or enter into a new agreement consistent with the purposes of this Agreement. Should the Parties be unsuccessful in their efforts, the Agreement shall terminate without penalty or recourse to the City.

11. **Governing Law.** The laws of the State of Colorado shall govern the validity, performance and enforcement of this Agreement. Should either Party institute legal suit or action for enforcement of any obligation contained herein, it is agreed that venue of such suit or action shall be proper and exclusive in the district court for Jefferson County, Colorado.

12. **Notices.** All notices required or permitted under this Agreement shall be in writing and shall be hand delivered or sent by certified mail, return receipt requested, postage prepaid, to be addressed to the Parties set forth below. All notices so given shall be considered effective upon the earlier of the actual receipt or seventy-two (72) hours

after deposit in the United States Mail with the proper address. Either Party by notice so given may change the address to which future notices shall be sent:

Notice to the City: City Manager
City of Wheat Ridge
7500 W. 29th Avenue
Wheat Ridge, CO 80033

Copy to: City Attorney
City of Wheat Ridge
7500 W. 29th Avenue
Wheat Ridge, CO 80033

Notice to the Owner: Grammys Goodies
4601 Harlan Street
Wheat Ridge, CO 80033

13. Entire Agreement – Amendments. This Agreement embodies the whole agreement of the Parties. There are no promises, terms, conditions, or obligations other than those contained herein and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the Parties hereto. This Agreement may be amended only by written agreement between the Owner and the City acting pursuant to City Council authorization.

14. Effective Date. This Agreement shall be effective and binding upon the Parties upon the date first set forth above. Notwithstanding any provision of this Agreement which may be interpreted to the contrary, in the event that Owner does not acquire title to the Property and construct and make improvements to the Property on or before December 31, 2020, then upon notice by the Owner to the City, this Agreement shall terminate and both Parties shall be relieved of all liability hereunder.

IN WITNESS WHEREOF, Owner and City have each caused this Agreement to be executed by the authorized Parties.

OWNER

GRAMMIES GOODIES

Title

State of Colorado)
) ss.
County of _____)

The foregoing Agreement was acknowledged before me this ___ day of _____, 20___, by _____ as _____ [title] of _____, Inc.

WITNESS MY HAND AND OFFICAL SEAL.
My Commission expires: _____

Notary Public

CITY OF WHEAT RIDGE

By: *Bud Starker*
Name: Bud Starker
Title: Mayor

ATTEST:
Steve Kirkpatrick
Name: Steve Kirkpatrick
Title: City Clerk

State of Colorado)
) ss.
County of Jefferson)

The foregoing Agreement was acknowledged before me this 11 day of May, 2020, by Bud Starker as Mayor and Steve Kirkpatrick as City Clerk, respectively, of the City of Wheat Ridge, Colorado.

WITNESS MY HAND AND OFFICAL SEAL.
My Commission expires: Aug. 6, 2022

Allison Menard
Notary Public

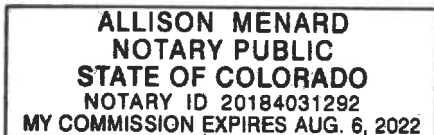


EXHIBIT A

ENHANCED SALES TAX INCENTIVE PROGRAM (ESTIP)

Section 1. Enhanced Sales Tax Incentive Program Amended:

Division 4 of Article I of Title 22 of the Wheat Ridge Code of Laws, entitled "Enhanced Sales Tax Incentive Program," is hereby amended to read:

Sec. 22-73. Program established.

There is hereby established within the city an enhanced sales tax incentive program.

Sec. 22-74. Purpose.

The purpose of the enhanced sales tax incentive program created by this division is to encourage the establishment and/or substantial expansion of retail sales tax generating businesses within the city, thereby stimulating the economy of and within the city, thereby providing employment for residents of the city and others, thereby further expanding the goods available for purchase and consumption by residents of the city, and further increasing the sales taxes collected by the city, which increased sales tax collections will enable the city to provide expanded and improved municipal services to and for the benefit of the residents of the city, while at the same time providing public or public-related improvements at no cost, or at deferred cost, to the city and its taxpayers and residents.

Sec. 22-75. Definitions.

The following words, terms and phrases, when used in this division, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Enhanced sales tax shall mean the amount of sales tax collected by the city over and above a base amount negotiated by, and agreed upon by, the applicant and the city, and which amount is approved by the city council, which base amount shall never be lower than the amount of sales taxes collected by the city at the property in question in the previous twelve (12) months plus a reasonable and agreed upon percentage of anticipated increase in sales taxes, or, in the case of a newly established business, an amount which represents the good faith determination by the

applicant and the city as to the amount of sales taxes which could be generated from the new business without the participation by applicant in the ESTIP created under this division.

ESTIP means the enhanced sales tax incentive program created under this division.

Owner or proprietor shall mean the record owner or operator of an individual business, or, in the case of a shopping center, the owner of the real property upon which more than one (1) business is operated, provided that the owner (whether an individual, corporation, partnership or other entity) is the owner or lessor of the individual businesses operated thereon.

Sec. 22-76. Participation.

Participation in ESTIP shall be based upon approval by the city council exercising its legislative discretion. Any owner or proprietor of a newly established or proposed retail sales tax generating business or location, or the owner or proprietor of an existing retail sales tax generating business or location which wishes to expand substantially, may apply to the city for inclusion within the ESTIP provided that the new or expanded business is reasonably likely, in the Council's judgment, to generate enhanced sales taxes of at least Ten Thousand Dollars (\$10,000) in the first 12 months following the approval of the agreement.

Sec. 22-77. Approval of agreement; use of funds generally.

Approval by the city council of an agreement implementing this ESTIP shall entitle the successful applicant to share in enhanced sales taxes derived from applicant's property or business in an amount which shall not in any event exceed the enhanced sales taxes; provided, however, the applicant may use such amounts only for public and/or public-related purposes such as those specified herein and which are expressly approved by the city council at the time of consideration of the application. The time period in which the enhanced sales taxes may be shared shall not commence until all public or public-related improvements are completed, and shall be limited by the city council, in its discretion, to a specified time, or until a specified amount is reached.

Sec. 22-78. ELIGIBLE Uses.

The uses to which the shared enhanced sales taxes may be put by an applicant shall be strictly limited to those which are public or public-

related in nature. For the purposes of this division, public or public-related purposes shall mean public improvements, including but not limited to streets, sidewalks, curbs, gutters, pedestrian malls, street lights, drainage facilities, landscaping, decorative structures, facades, statuaries, fountains, identification signs, traffic safety devices, bicycle paths, off-street parking facilities, benches, restrooms, information booths, public meeting facilities, and all necessary, incidental, and appurtenant structures and improvements, together with the relocation and improvement of existing utility lines, and any other improvements of a similar nature which are specifically approved by the city council upon the city council's finding that said improvements are public or public-related improvements, and that such improvements shall enhance the competitive position of the applicant within the Denver metropolitan area marketplace.

Sec. 22-79. Increments, sharing of funds.

The base figure for sales taxes shall be divided into twelve (12) monthly increments, which increments are subject to agreement between the parties, and approval by the city council, and which increments shall be reasonably related to the average monthly performance of the business or property in question, or similar businesses in the area (i.e. adjust for seasonal variations). If in any month the agreed upon figure is not met by the applicant so as to create enhanced sales tax for that month, no funds shall be shared with THE applicant for that month, and no increment shall be shared until that deficit, and any other cumulative deficit, has been met, so that at the end of any twelve-month cycle, no funds have been shared in excess of the agreed enhanced sales taxes.

Sec. 22-80. Revenues restricted.

It is an overriding consideration and determination of the city council that existing sources of city sales tax revenues shall not be used, impaired, or otherwise affected by this ESTIP. Therefore, it is hereby conclusively determined that only enhanced sales taxes generated by the properties described in an application shall be subject to division under this ESTIP. It shall be the affirmative duty of the Sales Tax Division to collect and hold all such enhanced sales taxes in a separate account apart from the sales taxes generated by and collected from the other sales tax generating uses and businesses within the city and to provide an accounting system which accomplishes the overriding purpose of this section. The city council finds and declares that this division would not be adopted or implemented but for the provisions of this section.

Sec. 22-81. Criteria for approval of agreement.

Approval of an ESTIP agreement shall be given by the city council, at a public hearing, held as a portion of a regularly scheduled city council meeting. Notice of which has been published in a newspaper of general circulation at least seven (7) days prior the hearing. The Council's determination of the amount of sales tax to be shared shall be based upon the identified need or value the business offers to the community in terms of sales tax generation, investment in the community, or increased employment based upon the following criteria:

- (1) The amount of enhanced sales taxes which are reasonably to be anticipated to be derived by the city through the expanded or new retail sales tax generating business;
- (2) The public benefits which are provided by the applicant through public works, public improvements, additional employment for city residents, etc.;
- (3) The amount of expenditures which may be deferred by the city based upon public improvements to be completed by the applicant;
- (4) The conformance of the applicant's property or project with the comprehensive plan and zoning ordinances of the city;
- (5) The agreement required by section 22-82 having been reached.

Sec. 22-832. Agreement required.

- A) Each agreement submitted to the city shall be subject to approval by the council solely on its own merits. The approved agreement shall be executed by the owner and the city, and shall, at a minimum, contain:
- (1) A list of those public or public-related improvements which justify applicant's approval, and the amount which shall be spent on such improvements;
 - (2) The maximum amount of enhanced sales taxes to be shared, and the maximum time during which the agreement shall continue, it being expressly understood that any such agreement shall expire and be of no further force and effect upon the occurrence of the earlier to be reached of the maximum time of the agreement (whether or not the maximum amount to be shared has been reached) or the maximum amount to be shared (whether or not the maximum time set forth has expired);
 - (3) A statement that the agreement is a personal agreement which is not transferable and which does not run with the land;

- (4) That the agreement shall never constitute a debt or obligation of the city within any constitutional or statutory provision;
 - (5) The base amount which is agreed upon by month, and the fact that if, in any month as specified, sales taxes received from the property do not at least equal such amount, that there shall be no sharing of funds for such month;
 - (6) The base amount shall be agreed upon which shall consider the historic level of sales at the property in question, or a similar property within the area in the event of a new business, and a reasonable allowance for increased sales due to the improvements and upgrades completed as a result of inclusion within this program;
 - (7) A provision that any enhanced sales taxes subject to sharing shall be escrowed in the event there is a legal challenge to this enhanced sales tax incentive program or the approval of any application therefor;
 - (8) An affirmative statement that the obligations, benefits, and/or provisions of this agreement may not be assigned in whole or in any part without the expressed authorization of the city council, and further that no third party shall be entitled to rely upon or enforce any provision hereof;
 - (9) Any other provisions agreed upon by the parties and approved by the city council.
- B) Approval shall be by motion adopted by the majority of the entire City Council.

Sec. 22-843. No joint venture; liability.

The city council has enacted this ESTIP as a joint benefit to the public at large and to private owners for the purposes of providing the city with increased sales tax revenues generated upon and by properties improved as a result of this program; public improvements being completed by private owners through no debt obligation being incurred on the part of the city, and allowing applicants an opportunity to improve properties which generate sales activities, which improvements make those properties more competitive in the marketplace and further provide to the applicant additional contingent sources of revenues for upgrading such properties. Notwithstanding any provision hereof, by adopting this program and approving agreements under the same, the city shall never be a joint venture in any private entity or activity which participates in this ESTIP and the city shall never be liable or responsible for any debt or obligation of any participant in ESTIP.

EXHIBIT B

Legal Description of the Property

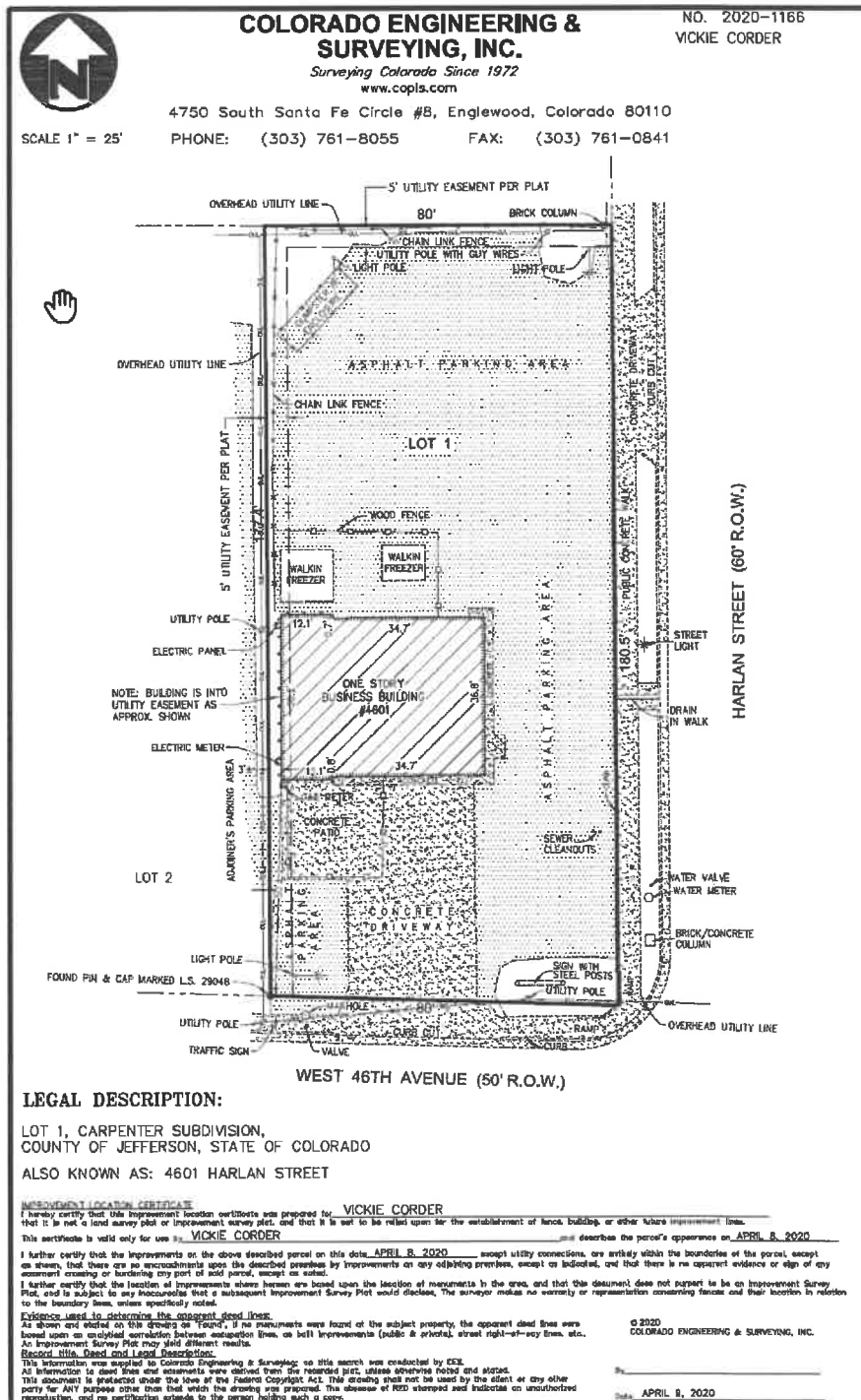


EXHIBIT C

Qualifying Public Improvement Costs

Alimar Construction LLC.

3665 Lee St
Wheat Ridge, CO 80033
(720) 569-6764

Date: 1/31/2020 Project: #2401
Job name/Location: Vickie and Jeff Corder Occupancy: Type:
4601 Harken St. Job Description: General Contract
Wheat Ridge, CO 80033

To: Vickie and Jeff Architect:
Engineers:

Includes:

Item Description	Man Hrs.	Schedule/Start	Cost
General Conditions:			
Steel Building			\$23,000.00
Erection			\$7,500
Caissons (4)			\$4,000.00
trench drain and cutout			\$2,500.00
misc carpentry			\$5,000.00
Garage Doors and Windows:			\$15,000.00
Brick or Rock Wainscot:			\$4,500.00
HVAC:			
heater with gas connection installed- no ductwork			\$3,200.00

Electrical:			\$1,250.00
Flooring:			\$1,100.00
one color epoxy coat- polyurethane or acid stain in a coat			
upgrade			
Painting:			
Total:			\$67,050.00
Prft:			
Supervision:			
Overhead:			\$3,200.00
permits, etc.			
Total:			\$70,250.00
Exclusions: site work and utilities (including but not limited to Excel Energy), hazardous materials and			
abatement, architecture and engineering, kitchen sink and faucet, appliances			