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January 9, 2026

VIA ELECTRONIC MAIL

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Re: Response to EY Observation Report

Dear Mr. Flanagan:

As counsel to Centerra Metropolitan District Nos. 1-5 (collectively, the “Metro District”), I am writing to provide the Metro District’s response to your December 16, 2025, letter. The specific items identified in your letter are restated in italics below:

1. *The contract procurement violations noted in the Report, including that the Metro District:*
 - (i) *Did not prequalify bidders;*

The Report indicates that the Metro District has not historically pre-qualified bidders in advance of the project-specific public bid process. The Report is correct in this regard, but it should be noted that the Metro District follows an extensive qualification process of every bidder with every bid and ***complies with State law requirements applicable to the Metro District for every bid.*** The Metro District believes that performing a qualification process with every bid is a better practice to identify the most qualified contractors at the time and to receive the most competitive bids for the current market conditions. The Metro District will employ a pre-qualification process going forward but would like the opportunity to discuss with the City and LURA staff amending the MFA, as the Report suggests, to simply require the Metro District to follow the State law public bidding requirements, which the Metro District has always done. The Metro District believes that process is more inclusive, transparent, and yields the best result for the taxpayers. Any process that would potentially chill prospective bidders from submitting bids for Metro District construction work reduces competition and transparency and is not in the best interests of the Metro District or its taxpayers, nor is it in the City’s best interests as a party to the MFA.

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(ii) *Did not award the bid to the lowest bidder in at least one instance;*

MFA Exhibit L, Sections 1.0(7) and 1.17 do not require the Metro District to award contracts to the lowest bidder. Rather, those MFA sections require the Metro District to award the construction contract to the ***low responsible bidder***. The City Code, Section 3.12.120, requires construction contracts to be awarded to the ***lowest responsive and responsible bidder***. The State law industry standard applicable to the Metro District also requires construction contracts to be awarded to the ***lowest responsive and responsible bidder***. These standards recognize that while a bid amount is perhaps the most important consideration the Metro District Board must take into account, it is not the only consideration. In addition to bid amount, the Board also must consider the bidder's recent performance in analyzing bids. This performance is typically analyzed by reviewing a bidder's history of change orders, meeting scheduling requirements, whether warranty obligations have been satisfied, and a review of references from owners of other similar projects on which a bidder has worked. The Metro District Board takes all of these factors into account in analyzing bids to achieve the most efficient, cost-effective, and risk-averse outcome for the Metro District and its taxpayers.

The Report references the Savanna 2nd Subdivision project where the Metro District awarded the contract to the low responsive and responsible bidder which was \$9,686 higher (0.56%) on a \$1,737,913 project. Following the public bid opening, the standard process of checking references was conducted, and the apparent low bidder did not have good reviews on recent, similar type projects. The other contractor, who was slightly higher in bid price, had good reviews and was actively performing well on a project at a nearby district. In a public Metro District Board meeting after being advised by staff of the reference concerns, the Metro District Board made a decision it felt was in the best interest of the taxpayers and the successful outcome of the project.

(iii) *Did not solicit public bids on a variety of contracts included within the MFA's broad definition of "Construction";*

MFA Section 1.24 defines "Construction" as the design, construction, installation, maintenance, repair, replacement, reconstruction, improvement, expansion and operation of the described Improvements.

The Report questions whether this broad definition requires the Metro District to publicly bid all contracts for services rather than just those contracts for construction. MFA Section 6.3.2 requires “For all work commencing on or after January 20, 2004, Constructors and the Service District shall comply with the contract procurement processes set forth on Exhibit ‘L’ for all *construction* contracts for work or material, or both, involving the Public Improvements.”

MFA Exhibit L, in the General Purpose preamble, states, “All *construction* contracts greater than \$25,000 or such higher amount as may be established in the Special Districts Act, for Local Improvements by the Service District/Constructor, shall be awarded by a Competitive Sealed Bidding Process,” as delineated in Exhibit L.

In both above referenced MFA sections, the word “construction” is not capitalized, meaning it is not intended to mean the defined term “Construction” in the MFA; rather, the intent is to employ the commonly held definition of the word. Written another way, the Metro District’s interpretation of the MFA bidding requirements is that construction contracts must be publicly bid and have been since the Metro District’s inception. Service contracts for design, maintenance, and operations are not required to be publicly bid by State statute or the MFA.

Additionally, Section 32-1-1001(1)(d)(I), C.R.S., requires, for special districts, a “notice shall be published for bids on all construction contracts for work or material, or both, involving an expense of one hundred twenty thousand dollars or more of public money.” (Note that the statutory threshold for public bidding requirements for construction contracts was \$25,000 at approval of the MFA, increased to \$60,000, and was increased again to \$120,000 over time).

The Metro District has complied with the MFA and State law in publicly bidding all contracts for construction, materials, or both. Special districts are not required to publicly bid contracts for professional services, project design services, or maintenance and operations services by either the MFA or State law. Even if the Metro District chose to bid such services, the Metro District would award such work to the low reasonable and responsive bidder, not just the lowest bidder.

- (iv) *Did not record all bids received on a bid abstract sheet;*

The specific term "bid abstract sheet" is not a term the Metro District uses. For every public bid the Metro District's staff completes a bid review and bid tabulation which includes a summary that lists all the bids received for purposes of transparency and recordkeeping. The bid package review includes all elements of a typical bid abstract including, but not limited to, project name, project number, date and time of bid opening, names of all bidders, total bid amounts, bidder acknowledgment of addenda, bid bond, and confirmation of contractor officer signatures. EY reported that the Metro District has not documented bid receipts with an abstract. However, omitted from the Report is that the Metro District conducts public bid openings where contractors physically submit their sealed bids to the location of the public bid opening and at the exact time bids are due. All bids are opened one by one, at a public bid opening (which can be attended online), and the total bid amounts for each bid are read aloud in front of all those present at the bid opening. No late bids are considered. The Metro District's staff does an extensive review of the proposals, and this work is documented and reviewed with the Metro District Board during public Board meetings (which can be attended online) prior to the Board's public vote to award a construction contract. The information that would be included in a "bid abstract" is included in the staff review and tabulation. The Metro District can separate the information related to time of receipt of bids into a separate "abstract" going forward, or, as mentioned above and suggested in the Report, the MFA parties could amend the MFA to track with state law bidding requirements, which the Metro District has followed.

- (v) *Approved a change order that expanded the project scope and exceeded the \$60,000 threshold without soliciting public bids in at least one instance; and*

The Report references the Parcel 206 Site Improvements project where a change order was issued for storm drainage, a related and connected scope of work associated with this site improvements project. The storm drainage improvements were still in City design approval when the original contract was awarded; however, the storm drainage scope was materially linked with work encompassed in the original bid. Rather than stop the project and spend the time and money to rebid (approximately \$8,000 - \$12,000 just for the bid process not including design and contracting costs and 10-12 weeks for the bid process and contract documentation), the storm drainage work was change ordered to keep the project on schedule in the proper construction sequence.

The project manager and engineer were able to review and validate unit pricing received from this contractor against actual pricing from recently completed projects including Hahn's Peak Extension, Parcel 206 Sanitary Sewer, Parcel 222, Parcel 505, and projects at Lakes at Centerra with similar scope. They used their extensive knowledge of construction material and labor pricing to determine the change order pricing to be in line with market pricing. Utilizing this qualified contractor who already was mobilized on site was the most effective use of taxpayer funds, minimized costly project delays, and avoided multiple contractors working on the same site on the same scope of work. While the cost of this change order was \$82,630, there is no State law or MFA requirement to bid change orders which exceed the then applicable bidding threshold amount.

- (vi) *Awarded a contract to a bid that exceeded the maximum subcontractor amount in at least one instance.*

The Report references the Parcel 206 Surface Parking project where a contractor was selected who exceeded the maximum subcontractor amount. The Metro District has a self-performance requirement of 40% and a maximum subcontractor performance limit of 60%. ***Self-performance requirements are not an MFA requirement.*** The Metro District received only two bids for the project from Hall Irwin who proposed 2% self-performance and 98% subcontractor performance and DCP Civil who proposed 28.8% self-performance and 73.2% subcontractor performance. Due to the nature of the project scope of work, which was particularly heavy in subcontracted asphalt paving, concrete, and lighting, and the fact that neither contractor was meeting the Metro District's **self-imposed** self-performance percentage thresholds, the Metro District Board discussed it in a public Board meeting and elected to waive the requirement and award the contract to the low responsive bidder in Hall Irwin.

Additionally, the Metro District's self-imposed self-performance requirements are targets, and the Metro District will modify its pre-bid documents to clarify this point. The self-performance targets are intended to reduce risk in construction projects. The more work a general contractor self-performs, the more work the general contractor directly controls. In certain circumstances and in certain market conditions, waiving self-performance minimums is in the best interests of the Metro District and its taxpayers.

2. *The disbursement issues noted in the Report including:*
 - (i) *Not assigning account coding to expense approvals;*
 - (ii) *Inconsistent account coding;*
 - (iii) *Incorrect account coding; and*
 - (iv) *Incorrect transaction date coding.*

The four accounting items noted in the Report and referenced in the December 16, 2025, letter address coding issues, and are addressed in the aggregate.

Section 5 of the Report identifies purported bookkeeping exceptions in the disbursement process. Upon receipt of the Report, the Metro District was able to review the accounting records related to the exceptions identified. The Metro District's Accountant confidently disputes 6 of the 10 exceptions as specified in Table 7 of Section 5.1 of the Report. Sample Nos. 2, 3, 22, 32, 48, and 53 were identified as having incorrect coding, missing coding, or mismatch coding. The Metro District's Accountant finds the reporting of these exceptions to be incorrect and can provide copies of accounting records to the City upon request to support the disputed exceptions.

The Report correctly identifies two samples in Table 7 (samples 8 and 37) where the coding on the invoice from the Metro District's Manager did not match the actual account coded per the general ledger. The Metro District has internal controls in place to review the accuracy of the invoice coding provided by the Metro District's Manager. In the two instances, the Metro District's Accountant identified that the Metro District's Manager had provided an incorrect account code. The Metro District's Accountant worked with the Metro District's Manager to correct the coding. If the Metro District's Accountant did not change the account code, the accounting records would be wrong.

The Report correctly identifies one sample in Table 7 (sample 63) where the invoice has a missing code. The invoice in question was stamped and approved by the Metro District's Manager. However, the code written on the invoice was only partially completed. The invoice was for a new project which did not yet have an account established. The Metro District's Manager did not write the full account code because it did not yet exist. The Metro District's Manager worked with the Metro District's Accountant to get the new account code created. If the Metro District's Manager had written any of the existing account codes on the invoice, the accounting records would be wrong.

The Report correctly identifies one sample in Table 7 (sample 14) where the invoice has a wrong account code. The account code on the invoice matches the actual account code per the general ledger. However, it has been determined that the account code used by the Metro District's Manager was incorrect and the Districts' Accountant did not catch the error during her review. The invoice was incorrectly coded to a like-kind account which is a sub-account used for management purposes only. For external reporting purposes, the two account codes are combined

and reported together. As such, all financial reports provided to LURA and all other external stakeholders were accurate. Additionally, the financial statements provided to LURA and all other external stakeholders were audited by an independent auditor with an unmodified or “clean” opinion which indicates the financial statements of the Metro District are materially correct and can be relied upon.

The Report correctly identifies exceptions in Table 8 where the dates on the invoices do not match the general ledger. The Metro District does not perform a monthly hard close which includes estimating expenses for unreceived invoices. The Metro District’s accounting and invoice coding practices conform with common industry standards. The Metro District performs a monthly soft close process and prepares financial reports for internal management review. When an invoice is received late, the Metro District’s Accountant does not go back and change the prior month’s financial report as it would be confusing to management and the Metro District Board members. Therefore, the Metro District’s Accountant books late-received invoices in the month received. The exception to this practice is year-end. The Metro District must provide external reporting for the fiscal year end to LURA and other external stakeholders. As such, the Metro District has internal controls in place that ensure all invoices received after year-end are booked to the appropriate fiscal year. This ensures external reporting is consistent with generally accepted accounting principles and standards. The invoices identified in the Report were late received invoices. Even though they were not coded in the specific month of the invoice, all invoices were properly reported in the correct fiscal year. One specific exception identified in the Report is sample 32, which appears to illustrate an invoice coded to 2019 that may have belonged in 2018. The invoices in sample 32 were part of a reimbursement request submitted to the Metro District. Because of the nature of the reimbursement request, the payment obligation of the Metro District was not present until 2019 when the board approved the reimbursement, regardless of when the services were performed by the vendor. Coding the sample 32 invoices to the period indicated in the Report, would have resulted in incorrect accounting records. The financial statements provided to LURA and all other external stakeholders were audited by an independent auditor with an unmodified or “clean” opinion which indicate the financial statements of the Metro District are materially correct and can be relied upon.

Section 5 of the Report identifies several purported bookkeeping exceptions. The Metro District’s review of the Report determined that the majority were incorrectly reported and can be substantiated with supporting documentation. Of the ten samples cited, six are confidently disputed, and the remaining four reflect either appropriate corrective actions taken in accordance with internal controls or immaterial coding issues that did not affect the accuracy of external financial reporting. The Metro District’s accounting practices, including the treatment of late-received invoices and reimbursement obligations, are consistent with industry standards and generally accepted accounting principles. Importantly, all financial statements provided to LURA and other external stakeholders were audited by an independent auditor and received an unmodified opinion, confirming that the Metro District’s financial records are materially accurate and reliable.

3. *Conflict of interest issues noted in the Report, including that the Metro District entered into several agreements, without recusal, with entities that the Metro District members have a direct relation to including McWhinney Real Estate Services, Inc., Centerra Properties West, LLC, and Centerra Retail Sales Fee Corp. (Note that McWhinney Real Estate Services, Inc., is now McWhinney Real Estate Services, LLC)*

Metropolitan districts are a statutory tool to facilitate the financing and operation of public improvements necessary for new development. In the development phase of a real estate project, it is common for a district's board of directors to consist of individuals working for the development company. All the Metro District's Board members are employees of McWhinney Real Estate Services, LLC. As a result of this employment, from time to time the Metro District Board members *may* be faced with potential conflicting interest transactions in their service as Board members.

Title 32, C.R.S., (the Special District Act) states: "any director shall disqualify himself or herself from voting on any issue in which the director has a conflict of interest *unless* the director has disclosed such conflict of interest in compliance with Section 18-8-308, C.R.S." Section 32-1-902(3)(b), C.R.S. Section 18-8-308, C.R.S., recognizes that public servants may be involved in important transactions when they exercise any substantial discretionary function in connection with a government contract, purchase, payment, or other pecuniary transaction. A "potential conflicting interest" exists for a public servant when he or she is a director or executive officer or otherwise owns or controls directly or indirectly a substantial interest in any nongovernmental entity participating in the transaction. Section 18-8-308(2), C.R.S. A public servant commits "failing to disclose a conflict of interest" if he or she exercises such a substantial discretionary function without having given seventy-two hours' actual advance written notice to the Secretary of State and to the governing body affected (here, the special district) of the existence of a known potential conflicting interest concerning the transaction. For all Metro District Board meetings, written disclosures of potential conflicts of interest were filed with the Secretary of State and the Metro District Board at least 72 hours prior to each Board meeting, as required by Section 18-8-308, C.R.S., thereby permitting the Board members to participate in the Board meetings.

Section 24-18-101, *et seq.*, C.R.S., contains a similar provision as that in the Special District Act. It provides that special district board members (along with other local government officials) who have a personal or private interest in any matter proposed or pending before the governing body shall disclose such interest to the governing body and shall *not* vote thereon and shall refrain from attempting to influence the decisions of the other members of the board in voting on the matter. Section 24-18-109(3)(a), C.R.S. However, a board member *may vote notwithstanding this prohibition if*: (1) his or her participation is necessary to obtain a quorum or otherwise to enable the board of directors to act; and (2) he or she complies with the voluntary disclosure procedures defined in Section 24-18-110, C.R.S. Section 24-18-109(3)(b), C.R.S.

As noted above, for all Metro District Board meetings written disclosures of potential conflicts of interest were filed with the Secretary of State at least 72 hours prior to each Board meeting, satisfying the requirements of both Section 18-8-308, C.R.S., and Section 24-18-110, C.R.S. In addition, all Board members' participation has been necessary to obtain quorums at Board

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meetings and to otherwise enable the Board to act, allowing their participation at Board meetings as set forth in Section 24-18-109(3)(b), C.R.S.

With respect to the conflict of interest issues noted in the Report, the Metro District's Board members have complied with State law and there is no violation, material or otherwise, of the MFA in the handling of potential conflict of interest issues.

As discussed above, the Metro District believes that all actions taken since formation in 2004 have been in the best interest of the Metro District and its taxpayers and compliant with State law. ***The Report did not reveal any misappropriation or misuse of public funds. Nor did the Report find any material violations of the MFA.*** The only potential MFA violations relate to the timing of qualifying bidders and whether the Metro District's tabulation of bids is inconsistent with the "bid abstract." Given that the Metro District has thoroughly qualified all bidders and has tracked all bids timely received and opened and reviewed only those timely received, any MFA violation with respect to those items is immaterial.

The Metro District will begin separating its bid tracking system to include the bid submittal information in a bid abstract. The Metro District also will pre-qualify bidders, in addition to qualifying them once bids are received, going forward. The Metro District would like to discuss with the City and LURA staff, as suggested in the report, amending the MFA with respect to the bidding process to require compliance with State law, which the Metro District has done since its formation in 2004.

The remaining items identified in the Report and your December 16, 2025, letter, namely the definition of "Construction," the instance in which a bid was awarded to a bidder who was not the low bidder, bidding requirements for change orders, self-imposed self-performance requirements, disbursement issues, and the conflict of interest issues are not MFA issues, or are not MFA violations, as addressed above. The Metro District suggests routine meetings with City and LURA staff going forward to discuss the non-MFA items and improvement in any areas where improvement can be made to best implement the MFA.

Sincerely,

ICENOGLE SEAVER POGUE
A Professional Corporation



Alan D. Pogue

cc: Vince Junglas