

DISTRICT COURT, CITY AND COUNTY OF DENVER, COLORADO 1437 Bannock Street Denver, CO 80202	DATE FILED: May 12, 2023 3:41 PM FILING ID: 5E05571786C48 CASE NUMBER: 2023CV31418 <p style="text-align: center;">▲ COURT USE ONLY ▲</p>
Plaintiff: CITY OF AURORA, v. Defendant: CITY AND COUNTY OF DENVER.	
Name: Christopher M. Jackson, No. 49202 Adrienne K. Rosenbluth, No. 55965 Address: HOLLAND & HART LLP 555 17th Street, Suite 3200 Denver, CO 80202 Tel.: (303) 295-8000 Fax: (303) 295-8261 Email: cmjackson@hollandhart.com akrosenbluth@hollandhart.com <i>Attorneys for Plaintiff</i>	Case No. Div: JURY TRIAL DEMANDED
COMPLAINT	

Plaintiff City of Aurora (“Aurora”) submits this Complaint against Defendant City and County of Denver (“Denver”).

NATURE OF THE ACTION

1. This case involves a dispute between Aurora and Denver about how to allocate responsibility for several lawsuits that arise out of protests that occurred in downtown Denver in the summer of 2020.
2. As a result of protests stemming from the death of Minneapolis resident George Floyd, Denver requested law enforcement aid from neighboring municipalities, including Aurora. Agreeing to help, Aurora sent many of its law enforcement officers to aid Denver in late May 2020.

3. Following the protests, several individuals filed suit against Denver, Aurora, and various Denver and Aurora law enforcement officers, asserting civil rights claims under 42 U.S.C. § 1983. Aurora has repeatedly asked Denver to confirm that it will indemnify Aurora or otherwise assume responsibility for these claims as required by state law and the parties' longstanding practice and agreement. Denver has refused, and so Aurora now seeks a declaration establishing that Denver does in fact have that obligation.

PARTIES

4. Plaintiff Aurora is a Colorado municipal corporation with its principal place of business located at 15151 E. Alameda Parkway, Aurora, CO 80012.

5. Defendant Denver is a Colorado municipal corporation with its principal place of business located at 1437 Bannock St., Rm 451, Denver, CO 80202.

JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction pursuant to Colorado Constitution Article VI, Section 9 and C.R.S. § 13-1-124(1).

7. This Court has personal jurisdiction over the Defendant because Denver is located within the State of Colorado.

8. Venue is proper pursuant to C.R.C.P. 98(c) because the Defendant resides within the Second Judicial District.

GENERAL ALLEGATIONS

Denver Protests and Call to Aid

9. On May 25, 2020, George Floyd was killed by Minneapolis police officers while under arrest.

10. In the days following Mr. Floyd’s death, protests broke out across the country, and Denver was no exception. Beginning May 28, 2020, protestors gathered in downtown Denver.

11. To keep the peace, the chief of the Denver Police Department requested aid from several surrounding law enforcement agencies pursuant to C.R.S. § 29-5-104.

12. This request was only the latest example of a longstanding practice under which Denver metro area police departments seek law enforcement assistance from one another.

13. Part of this longstanding practice and course of conduct included an agreement and understanding that the requesting municipality would indemnify or otherwise assume responsibility for all claims arising out of the request for aid.

14. Aurora answered Denver’s call, sending members of the Aurora Police Department and its Emergency Response Team to assist Denver in late May 2020.

15. When Aurora agreed to provide this aid, it did so with the understanding that, consistent with the parties’ longstanding practice, Denver would indemnify Aurora or otherwise assume responsibility for any claims arising out of the provision of this aid.

16. This understanding was a “term and condition” that was agreed upon between “the requesting and assigning chiefs of police or sheriffs.” C.R.S. § 29-5-104(1).

17. At all relevant times, the Aurora law enforcement officers who answered the call to aid performed their duties “subject to the direction and control” of the Denver chief of police. C.R.S. § 29-5-104(1).

18. Aurora provisionally assigned its law enforcement officers to the services of Denver.

19. Denver had Aurora’s consent to supervise and control the Aurora law enforcement officers who responded to the call to aid, and Denver was in a position to exercise that supervision and control.

The Ensuing Lawsuits

20. In the years following the Denver protests, several individuals filed civil rights lawsuits against various municipalities and law enforcement officers in connection with injuries they allegedly suffered while protesting in downtown Denver in 2020.

21. Aurora and several of its police officers have been named as co-defendants in several of those lawsuits, including:

- a. *Epps v. City and County of Denver*, No. 2020-cv-01878-RBJ-MEH;
- b. *Orlin v. City and County of Denver*, No. 2022-cv-00242-RMR-STV;
- c. *Cousik v. City and County of Denver*, No. 2022-cv-01213-PAB; and
- d. *Fink v. City & County of Denver*, No. 2022-cv-01305-MEH.

22. Over the last several years, Aurora has incurred and continues to incur substantial costs in defending itself and its individual officers in these lawsuits.

23. In addition, Aurora faces the possibility of having to pay substantial sums either in settlement or in satisfaction of a final judgment in those cases.

Aurora’s Attempts to Confirm Responsibility

24. Under both Colorado law and the parties’ agreement, Denver is required to indemnify Aurora or otherwise assume responsibility for all losses suffered in connection with Aurora’s response to Denver’s request for aid.

25. Specifically, state statute provides that when law enforcement officers are “assigned to temporary duty within the jurisdiction over another town, city, [or] city and county”

in response to a request for aid, “any liability that accrues under the provisions of article 10 of title 24, on account of the negligent or otherwise tortious act of the police officer or deputy sheriff while performing the duty is imposed upon the requesting town, city, [or] city and county . . . and not upon the assigning jurisdiction.” C.R.S. § 29-5-108(1).

26. State law also provides that law enforcement aid is provided “under the terms and conditions as shall be agreed upon between the requesting and assigning chiefs of police or sheriffs.” C.R.S. § 29-5-104(1).

27. Based on, among other things, (i) longstanding practice, both between Denver and Aurora specifically and among other jurisdiction in Colorado generally; and (ii) the direct communications between Denver and Aurora, a “term and condition” of Aurora providing aid was that Denver would indemnify Aurora or otherwise assume responsibility for any claims made against Aurora or its officers.

28. Under Colorado law, Denver is also vicariously liable for any and all claims arising out of Aurora’s loaned law enforcement officers. Denver and the Aurora law enforcement officers who answered the call to aid formed a special employment relationship under which Denver exercised supervision and control over the Aurora officers.

29. Aurora has alerted Denver numerous times to these obligations, both orally and in writing.

30. To date, Denver has refused to acknowledge its obligations, leaving Aurora uncertain as to whether Denver will abide by them.

31. Denver’s refusal is substantially impairing Aurora’s ability to negotiate settlements in any of the above-referenced lawsuits.

FIRST CLAIM FOR RELIEF
(Declaratory Judgment Pursuant to C.R.S. § 13-51-101 *et seq.* and C.R.C.P. 57)

32. Aurora incorporates the preceding paragraphs in this paragraph.

33. An actual controversy exists regarding Aurora's rights and Denver's obligations as they relate to claims arising out of the 2020 protests.

34. A declaratory judgment or decree would terminate the uncertainty or controversy giving rise to these proceedings.

35. Aurora seeks a declaratory judgment on the meaning and proper application of C.R.S. §§ 29-5-104, 108, and all other related statutes; the existence and terms of the parties' agreement when Aurora provided law enforcement aid to Denver; and Denver's vicarious liability for claims made against Aurora or its officers while those officers were responding to Denver's request for aid.

PRAYER FOR RELIEF

WHEREFORE, the Court should issue the following relief:

- A. A judgment in Aurora's favor and against Denver.
- B. A declaration that:
 - 1. pursuant to C.R.S. §§ 29-5-104 and -108, any liability that results from Aurora's providing aid to Denver in 2020 is imposed upon Denver as the requesting municipality, and not upon Aurora;
 - 2. an enforceable agreement exists between Denver and Aurora under which Denver must indemnify Aurora or otherwise assume responsibility for any and all losses arising out of Aurora's providing law enforcement aid to Denver during the 2020 protests;

3. Denver is vicariously liable for any and all claims arising out of Aurora's providing law enforcement aid to Denver during the 2020 protests; and
4. Denver must indemnify or otherwise assume responsibility for any and all losses suffered in connection with the lawsuits listed in this Complaint as well as any others asserted against Aurora or any of its officers that arise out of the 2020 protests in downtown Denver.

C. Any such other and further relief as the Court deems appropriate.

JURY DEMAND

Aurora demands a trial by jury on all issues so triable.

DATE: May 12, 2023

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