

RESOLUTION NO. 36-16

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT BETWEEN PUEBLO COUNTY, COLORADO AND THE CITY OF COLORADO SPRINGS, COLORADO PERTAINING TO THE EXPENDITURE OF FUNDS FOR A STORMWATER CONTROL PROGRAM, AND AUTHORIZING EXECUTION OF SUCH INTERGOVERNMENTAL AGREEMENT.

WHEREAS, the City Council of the City of Colorado Springs, Colorado ("City Council") is authorized, pursuant to § 29-1-203, Colorado Revised Statutes, to enter into intergovernmental agreements with other governmental entities; and

WHEREAS, the City Council, on behalf of the municipal government of the City of Colorado Springs (the "City") and on behalf of its enterprise Colorado Springs Utilities ("Utilities"), desires to enter into the attached intergovernmental agreement with Pueblo County, Colorado, pertaining to, among other things, the expenditure of funds for a stormwater control program (the "Stormwater IGA"); and

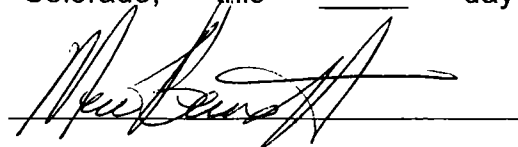
WHEREAS, City Council finds that approval of the Stormwater IGA is in the best interests of the citizens of the City of Colorado Springs and the ratepayers of Colorado Springs Utilities.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council hereby approves on behalf of the City and Colorado Springs Utilities, the Stormwater IGA, attached hereto as Attachment "A" and incorporated herein by reference.

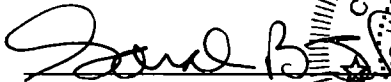
Section 2. The City Council hereby authorizes the Mayor of the City of Colorado Springs, on behalf of the City's municipal government, and the Chief Executive Officer of Colorado Springs Utilities, on behalf of Utilities, to execute the Stormwater IGA.

Dated at Colorado Springs, Colorado, this 20th day of April, 2016.



Merv Bennett, Council President

ATTEST:



Sarah Johnson, City Clerk



**INTERGOVERNMENTAL AGREEMENT
BETWEEN PUEBLO COUNTY AND THE CITY OF COLORADO SPRINGS AND ITS
UTILITY ENTERPRISE**

This Intergovernmental Agreement (“Agreement”) is entered into as of the 27th day of April, 2016, between Pueblo County (“Pueblo County”) and the City of Colorado Springs (“City”) and its utility enterprise, Colorado Springs Utilities (“Utilities”), together hereinafter referred to as the “Parties.” The effective date of this Agreement will be the date of the last required signature shown at the end of the document.

RECITALS

A. On April 21, 2009, Pueblo County granted Pueblo County 1041 Permit No. 2008-002 (“SDS 1041 Permit”) for the water project known as the Southern Delivery System (“SDS”). SDS is a storage and pipeline delivery system intended to bring water from Pueblo Reservoir to its four Participants, including the City. Utilities is the named “Applicant” representing the SDS Participants in matters relating to the SDS 1041 Permit and it is the project manager for the construction and operation of SDS. The SDS 1041 Permit contains commitments, terms, and conditions for its issuance and for the construction, operation, maintenance, and environmental mitigation of SDS “for the life of the SDS Project.”

B. The SDS 1041 Permit required the City Council for the City to take formal action to recognize the permitting commitments prior to the County’s issuance of the permit, and the City Council passed such a resolution on April 14, 2009 and directed Utilities to comply with such commitments. Under its Charter, the City owns the water rights to be conveyed by Utilities

through the SDS. The City also has acquired easements in its name for SDS in Pueblo County and Utilities has completed the construction of the SDS within the County.

C. Stormwater and municipal return flows from the City are discharged into Fountain Creek and flow through Pueblo County. The SDS 1041 Permit contains conditions and mitigation designed to address the impacts of stormwater flows in the Fountain Creek drainage.

D. Prior to the issuance of the SDS 1041 Permit, the City on November 22, 2005 approved Ordinance No. 05-192 to establish a Stormwater Enterprise (“SWENT”) to fund drainage studies, revisions to the City’s Drainage Criteria Manual (“DCM”), and stormwater capital improvement projects. SWENT was to be funded through a dedicated revenue source from fees on property within the City based upon impervious areas. SWENT collected these fees for 3 years, 2007 through 2009, in the approximate amount of \$15.2 million on average per year.

E. On November 23, 2009, the City Council of Colorado Springs, in response to the voter adoption of Initiative 300, voted to eliminate the collection of fees to fund SWENT.

F. In 2013, the City commissioned the engineering firm, CH2MHill, to review past studies and identify and estimate the costs of needed stormwater infrastructure within the City. On October 13, 2013, CH2MHill issued a Stormwater Needs Assessment identifying a list of 239 stormwater projects within the City at an estimated cost of completion at over \$534 million, not including the additional needs created by the wildfires in Waldo Canyon and in the Black Forest in 2012 and 2013.

G. On November 4, 2014, Ballot Initiative 1B, supported by the City Council and the El Paso County Commissioners, which would have created the Pikes Peak Regional Drainage

Authority to assess and collect fees for stormwater control within the City and El Paso County, was rejected by the local electorate.

H. On November 5, 2015, the City received notice of its alleged noncompliance with its Municipal Separate Storm Sewer System (“MS4”) permit which would be a violation of Section 402 of the Clean Water Act, 33 U.S.C. § 1342. The notice of violation was issued by the U.S. Environmental Protection Agency (“EPA”) and the Colorado Department of Public Health and Environment (“CDPHE”), and the claims were referred to the U.S. Department of Justice (“DOJ”) for legal action against the City (“MS4 Enforcement Action”). The associated 30-page Inspection Report by the EPA team, dated August 18-19, 2015, alleged numerous violations of the MS4 permit, including the City’s failure to provide adequate resources to develop, implement and enforce the MS4 Program.

I. In September 2015, the City and Utilities asked the engineering firm MWH Global (“MWH”) to begin a review and analysis of the City’s stormwater program. In response to the notice of the MS4 permit violations, and with the assistance of MWH, the City prepared a draft Stormwater Program Implementation Plan, dated January 15, 2016, which describes stormwater program improvements pledged by the City to be undertaken.

J. It has been asserted that the terms and conditions of the SDS 1041 Permit included an obligation to fund a stormwater control program to at least the former funding level of the City’s SWENT to help mitigate the downstream impacts of increased flows in Fountain Creek in Pueblo County. On April 13, 2015, the Pueblo County Board of County Commissioners (“BOCC”) enacted Resolution No. 15-091 directing Pueblo County staff to

investigate and recommend whether the lack of a dedicated funding mechanism by the City required a hearing by the BOCC to determine whether the SDS 1041 Permit should be revoked, suspended, amended, supplemented, or clarified. In a report dated May 11, 2015, County staff found that there was adequate justification for the County to issue an order to the City and Utilities to show cause at a public hearing why the SDS 1041 Permit should not be so suspended or amended on such grounds, but the BOCC elected to defer such action pending negotiations of this Agreement with the City and Utilities.

K. The City and Utilities do not concur that the SDS 1041 Permit mandates a certain level of funding or a particular funding mechanism for a stormwater control program within the City. The City and Utilities nevertheless have made the commitments in this Agreement in good faith in order to avoid a dispute between the Parties over compliance with the SDS 1041 Permit and to ensure the public safety of citizens of the City and Pueblo County.

L. It is anticipated that SDS will be completed and ready for commercial service during the second quarter of 2016. The cost for the current Phase 1 (Juniper Pump Station, delivery pipeline, and new water treatment plant) is projected to be \$829 million.

M. The provisions of this Agreement are designed to provide both a description of the City's and Utilities' commitments concerning their expenditures for stormwater management in or near the City and the ability for Pueblo County to verify that the expenditures and actions identified herein are, in fact, occurring.

For and in consideration of the foregoing recitals and the mutual promises and covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the Parties do agree and commit as follows:

I. DEFINITIONS

A. **"Capital Project"** means a project for the construction of facilities and infrastructure undertaken primarily to provide stormwater control (e.g., stormwater detention ponds, or channel preservation, restoration, or stabilization), with a monetary value of at least \$50,000 and long life (at least five years), and which results in the creation of a fixed asset or a significant revitalization that upgrades and extends the useful life of a fixed asset.

B. **"Construction"** means studying, land acquisition, planning, design, bidding, permitting, construction, construction management, project management, testing and commissioning.

C. **"Engineering Representatives"** means and includes departmental staff of the Parties as well as outside engineering firms that might be retained by the Parties.

D. **"Expend" or "Expenditures"** means both actual expenditures and encumbered funds. "Encumbered funds" shall mean monies which are appropriated and placed into a fund or account restricted (1) for payment of an authorized Stormwater Control Program activity and cannot be obligated or used for any other purpose, and (2) for payment of capital construction projects for which appropriate steps are being undertaken in a timely manner to advance towards physical construction.

E. **"Stormwater Capital Improvements Program ("CIP")"** means an annually updated plan of expenditures for Capital Projects for stormwater control with estimated costs,

sources of funding, and schedule of work over a five-year period, including those Capital Projects required by this Agreement.

F. **"Stormwater Control Program"** means the City and Utilities' program to control and mitigate the rate, volume, and quality of stormwater flows and associated erosion and sedimentation in or near the City, and includes a CIP, provisions for operation and maintenance of the City's stormwater facilities, compliance with the City's MS4 Permit, and protection of Utilities infrastructure from stormwater.

II. TERM

The Term of this Agreement shall be from the effective date of this Agreement through December 31, 2035, together with any extension thereof pursuant to the terms of the Agreement.

III. SPECIFIC PROVISIONS

A. *Stormwater Expenditures.*

(1) Expenditures by the City and Utilities. For calendar years 2016 through 2035, and subject to paragraph III.A(5)(d), the City and Utilities shall expend on the Stormwater Control Program a minimum of \$460 million over this twenty-year period, with the following minimum total, average annual, and minimum annual expenditures:

<u>Period</u>	<u>Minimum Total Expenditures</u>	<u>Average Annual Expenditures</u>	<u>Minimum Annual Expenditures</u>
First Five Years (2016-2020)	\$100 Million	\$20 M	\$16.5 M/yr.
Second Five Years (2021-2025)	\$110 Million	\$22 M	\$16.5 M/yr.
Third Five Years (2026-2030)	\$120 Million	\$24 M	\$16.5 M/yr.
Fourth Five Years (2031-2035)	\$130 Million	\$26 M	\$16.5 M/yr.

The City and Utilities combined expenditures shall comply with the minimum total expenditures and minimum annual expenditures during each five-year period; in no event shall their combined expenditures be less than the required minimum total expenditures annually and for each five-year period. The expenditures shall be shared by the City and by Utilities, which proportional share shall be determined solely by them. The City shall complete at least the Capital Projects identified on the list attached hereto as Exhibit A on or before December 31, 2035; provided, however, that such list may be revised, updated, modified, or amended by the Parties in accordance with the terms of Paragraph III.B below. To the extent that the Capital Projects identified on Exhibit A (as such list currently exists or is later modified by the Parties) are not completed on or before December 31, 2035 despite compliance with the expenditures requirements set forth above and due to factors beyond the City's and Utilities' control, the remaining Capital Projects shall be completed as expeditiously as practicable, but in no event later than December 31, 2040. In such event, the Term of this Agreement shall automatically be extended under the same provisions, covenants and conditions of this Agreement for additional one (1) year terms not beyond December 31, 2040, with annual expenditures equal to or greater than \$26 million for each year during that extended period.

(2) Annual Report of Expenditures. In order to verify whether the City's and Utilities' expenditures on the Stormwater Control Program meet or exceed the requirements of paragraph III.A(1), each year they shall file with Pueblo County a report containing an estimate of expenditures on or before January 31 of the year following the expenditures, followed by the filing of a preliminary report on or before March 31, and with a final report to be filed on or before June 30 of that year based on audited

financials. These reports shall provide appropriate details concerning the timing, amount and nature of all such expenditures made by the City and Utilities during the prior year for Capital Projects (with references to the specific Capital Projects required by this Agreement), operations and maintenance, MS4 Permit compliance, protection of Utilities infrastructure from stormwater, and any other relevant categories. If Pueblo County desires to inspect any of the identified Capital Projects or documents related thereto, it shall send a written request to the City's Public Works Director and the Water Services Officer of Utilities who shall expeditiously arrange for such inspection by Pueblo County, including by its Engineering Representatives.

(3) Utilities' Joint Obligation. To the extent that the City fails to expend its share of the minimum annual expenditures or minimum five-year total expenditures required to be expended by the City and Utilities as provided under paragraph III.A(1), Utilities, in addition to satisfying its own funding obligations, shall provide the amount of funds necessary to comply with such expenditure obligations and said funds shall be expended by the City. Utilities shall provide the funds, within 30 days of the filing of the final annual report referenced in paragraph III.A(2) above, or within 30 days of its receipt of a written notice and demand by Pueblo County if an annual report is not filed or if the report is disputed by the County. Such funds shall be expended by the City on its Stormwater Control Program, including on any CIPs required under paragraph III.B within six months of the City's failure to expend its share of the minimum annual expenditures or minimum five-year total expenditures required by paragraph III.A(1).

(4) Enforcement of Funding Obligations. The expenditure of the minimum funds referenced in paragraphs III.A(1) of this Agreement will assist in providing those

assurances sought by Pueblo County relative to the continued conduct of stormwater control activities in or near the City. Time is of the essence with respect to the City's and Utilities' performance of their respective funding and expenditure obligations. Consequently, if the City and Utilities fail to perform the funding of expenditure obligations required by paragraphs A(1) and (3) within the time period and for the specified purposes, Pueblo County, after providing a written notice to the City and Utilities of the violations and an opportunity to cure within 30 days, may declare a breach of this Agreement and pursue all available judicial remedies (including damages, injunctive relief, declaratory relief, specific performance and other equitable remedies) without further dispute resolution, and Pueblo County shall be entitled to recover from the City or Utilities all reasonable costs in connection therewith, including reasonable attorney's fees, if it ultimately prevails in the judicial proceedings. Separately and independently of any such judicial remedies for breach of this Agreement, Pueblo County may also, but shall not be required to, as a condition precedent or otherwise, pursue any other available relief and remedies, including actions under the SDS 1041 Permit, the federal SDS contracts and licenses, the MS4 Permit, and other federal and state permits; in agreeing to these potential remedies the City and Utilities do not waive any potential defenses.

(5) The City and Utilities Funding Sources. The Parties acknowledge that the Stormwater Control Program may be funded utilizing a variety of sources, including taxes, fees and grants. The Parties further acknowledge that it shall be within the reasonable discretion of the City and Utilities as to what sources of funding they may

choose to utilize, on an annual basis, in meeting the financial commitments identified in paragraphs III.A(1), subject to the following limitations:

a. Except as provided under subparagraph d. below, no grant monies received from other entities shall be credited toward or included in the expenditures, except for the monies contributed by the City or Utilities as a matching contribution toward said grants.

b. No monies spent by private developers on stormwater control activities, expenditures attributable to revenues from the Pikes Peak Rural Transportation Authority, expenditures associated with the Colorado Springs Airport, expenditures for road and bridge construction or maintenance, or any disaster assistance or other reimbursement to the City or Utilities for emergency or disaster relief (e.g., FEMA funds) shall be credited towards or included in the expenditures.

c. No expenditures and projects designed to meet certain other requirements of the SDS 1041 Permit shall be credited toward or included in the qualifying expenditure amounts, including: commitments under Condition No. 6 (Monetary Mitigation for Fountain Creek Impacts), No. 7 (Expenditures of Wastewater System Improvements), No. 8 (Sediment Control/Dredging and Clear Springs Ranch), No. 9 (Continuation of Pueblo Flow Management Program), No. 10 (Implementation of Arkansas River Low Flow Program), No. 18 (Monitoring Program and Adaptive Management for Fountain Creek and the Arkansas River), No. 24 (Conservation and Reuse), No. 25 (Compliance Monitoring and Reporting), and Mitigation Appendices associated with said conditions.

d. The City may include up to \$3.2 million dollars in actual third-party grants as contemplated in the actual 2016 budget and up to \$1.75 million dollars in such grants currently included in the proposed 2017 budget in fulfillment of its financial obligations hereunder; provided however as a consequence of the inclusion of such grant funds the City shall expend an additional amount equivalent to such grant funding within the first ten years.

B. ***Stormwater Capital Improvement Program.*** A CIP shall be implemented by the City and Utilities as follows during the Term of this Agreement:

(1) Capital Project Lists. The Parties have agreed to the following: A twenty-year list and ranking of City Capital Projects to be completed is attached hereto as Exhibit A, as set forth in paragraph III.A(1); a list of City Capital Projects for which expenditures are to be made for 2016 is attached hereto as Exhibit B; a 5-year list of City Capital Projects is attached hereto as Exhibit C; and a 3-year list of Utilities Capital Projects is attached hereto as Exhibit D. Of the 71 City Capital Projects identified on Exhibit A, the Engineering Representatives of the Parties identified 61 City Capital Projects as having benefits to both the City and Pueblo County, and 10 City Capital Projects that primarily benefit the City. The lists in Exhibit A, C and D may be updated, modified or amended in accordance with the terms of section III.B below. Any such update(s) or Capital Project substitutions shall result in an equivalent or greater expenditure of funds and the same or greater downstream benefit to Pueblo County as would have been provided under the then current 5 year list. The jointly developed project selection criteria (Exhibit E hereto) shall be utilized in evaluating such project revisions or updates. Utilities shall reimburse Pueblo County \$50,000 within 15 days of

the effective date of this Agreement toward the County's cost of retaining its outside Engineering Representatives for assisting the Parties in developing the list of Capital Projects identified in Exhibits A, B, and C.

(2) Identification of Capital Projects.

a. Beginning with the 2016 calendar year and extending through the Term of this Agreement, the Engineering Representatives of the Parties shall meet on or before March 31 of each year in order to prepare, review, discuss and update, as necessary, a five-year CIP for the City and a three-year CIP for Utilities, which shall include a list of Capital Projects, the construction of which will commence in the upcoming years. The Engineering Representatives shall endeavor to identify mutually acceptable updates or revisions.

b. To the extent that the Engineering Representatives of the Parties cannot reach agreement on any updates or revisions, the dispute shall be referred to the Public Works Directors of the respective Parties for resolution. If the Public Works Directors cannot reach agreement within 15 days of referral thereto, a member of an engineering firm with expertise in stormwater control programs selected by the Engineering Representatives of the Parties shall resolve the dispute and render a final, binding decision within 60 days of referral thereto. The selected engineering firm will be retained by both Parties which will be responsible for the cost pro rata.

c. Utilities shall reimburse Pueblo County up to \$10,000 each year (commencing in 2016) to defray the actual cost incurred by Pueblo County of using any outside engineering consultants to conduct these yearly reviews and any

associated inspections, payable within 30 days of Utilities' receipt of a statement from Pueblo County evidencing such costs.

(3) Effect of MS4 Enforcement Action.

a. The City, EPA, DOJ, and CDPHE are currently engaged in settlement discussions regarding the potential resolution of the MS4 Enforcement Action. These negotiations might lead to the execution of a Consent Decree or other type of enforceable settlement agreement, or if such is not possible, litigation that results in the entry of a federal court Judgment. The terms of such a Consent Decree, settlement agreement or Judgment cannot be determined at this time. The City shall use best efforts to avoid any conflict of terms between the Consent Decree, settlement agreement or Judgment and this Agreement.

b. To the extent that the final provisions of any such Consent Decree, settlement agreement or Judgment prove to be in conflict with the financial and/or capital project commitments made hereunder, the Parties agree to work in good faith to resolve any such conflict.

(4) Contingency for Stormwater Emergencies. Should an unanticipated emergency stormwater event occur, such as a flood, which event causes or threatens to cause property damage or create a threat to human health or safety which must be addressed in an immediate manner utilizing funds previously allocated for the listed Capital Projects, the City and Utilities shall promptly notify Pueblo County of such situation, and the Engineering Representatives of the Parties shall confer and reach agreement promptly on any required postponement and modification to the stormwater construction priorities in the CIP.

C. ***Regional Cooperation on Fountain Creek.*** Many of the concerns associated with stormwater flows in the Fountain Creek drainage are regional in nature. The Parties shall coordinate and cooperate in regional initiatives designed to address such concerns, including:

(1) By coordinated support of the initiatives undertaken by the Fountain Creek Watershed, Flood Control and Greenway District (“FCWFCGD”) to obtain federal and state assistance for stormwater, flood control and water quality projects within the Fountain Creek basin, including federal and state grants;

(2) By regional land use planning efforts where feasible and practicable;

(3) By regional water quality improvement and water quality regulatory initiatives, as determined appropriate and subject to each Party’s reservation of its regulatory authority.

(4) By coordinated support of acquisition of land or conservation easements by the FCWFCGD or other entities to preserve or enhance the Fountain Creek corridor below the City and through the City of Pueblo.

(5) By exploring opportunities for such coordination and cooperation on these Fountain Creek initiatives beyond the term of this Agreement.

D. ***Payments to FCWFCGD.*** Acknowledging the significance of activities to be undertaken by the FCWFCGD as such relate to water quality, flood control, the prevention of erosion and sedimentation within the Fountain Creek corridor, and the associated benefit to the efficient carriage of water down Fountain Creek for the City’s and Utilities’ water exchanges, Utilities shall further support such efforts by:

(1) 2016 Contribution to FCWFCGD. Within 30 days of the execution of this Agreement, Utilities shall contribute to the FCWFCGD or its Fountain Creek Watershed

Water Activity Enterprise (“Enterprise”) the sum of \$125,000 to be used for expenses of FCWFCGD for the 2016 year as approved by the Board of Directors of the FCWFCGD, including but not limited to the contribution of match funds to complete the CWCB approved study entitled “Evaluation of Flood Control Alternatives for the Fountain Creek Corridor,” which study encompasses an evaluation of both a dam and side detention facilities on Fountain Creek.

(2) Commencement of Payments under Condition 6 of the SDS 1041 Permit.

Within 30 days of the execution of this Agreement, Utilities shall, on behalf of the SDS Participants, make the first annual payment (together with the additional annual indexing amounts) due under Condition 6 of the SDS 1041 Permit for the purposes stated therein to the FCWFCGD or its Enterprise in the amount of \$9,578,817.00. The remaining annual payments shall be made on or before January 15 of the years 2017, 2018, 2019 and 2020 respectively.

(3) Cooperation on Future Funding. To ensure long-term funding of FCWFCGD’s annual operating budget, the City, Utilities and Pueblo County will work cooperatively and in good faith to establish a proportional formula by which each of the Parties and the other participating stakeholders in the FCWFCGD, will agree to contribute funds to ensure the long-term funding of FCWFCGD’s operating budget.

E. ***Contributions to Protection of Pueblo Levees.***

(1) Utilities shall contribute to the City of Pueblo or its Stormwater Enterprise funds not to exceed \$1 million a year for 3 years (\$3 million total). The first payment shall be made within 30 days of the execution of this Agreement. Subject to subparagraph (2) below, the second payment shall be made on January 1, 2017: and the

third payment on January 1, 2018. Except for delays beyond the control of the City of Pueblo, all such funds shall be used and expended by December 31, 2019 for the purpose of funding repairs or improvements to the levee system on Fountain Creek within the City of Pueblo, including such sediment removal as may be necessary to maintain the integrity of the levee structures, or the removal of debris and vegetation along Fountain Creek in or near the City of Pueblo that may adversely impact the operation of such levee system. To the extent that there may be funds remaining upon the completion of the repairs and improvements to the levee system as referenced herein, such funds may be utilized for sediment removal purposes as referenced under condition No. 8 of the SDS 1041 permit.

(2) Such contributions by Utilities shall be contingent upon a matching contribution from the City of Pueblo or its Stormwater Enterprise (which may include, in Pueblo County's discretion, any funds held by Pueblo County remaining at such time pursuant to monies contributed by Utilities under Condition 8 of the SDS 1041 Permit), such local match to be advanced concurrently with the payments by Utilities. Provision of the second and third payments shall be contingent upon the production by the City of Pueblo of documentation evidencing that a substantial portion of the combined prior year's funding has been expended for the allowed purposes. The above payments shall be in addition to any other payments required of Utilities and shall not release Utilities from any other duties or obligations otherwise imposed by any other applicable law, regulatory permit or governmental requirement.

(3) The City and Utilities agree to work cooperatively in the future with the City of Pueblo, Pueblo County, and other basin stakeholders, including the FCWFCGD,

to identify levee and sediment/debris related issues and sources of funding to address the same, including revenues available to the FCWFCGD.

F. ***Grant of DCM Variances.*** In late 2014, the City adopted its new DCM containing engineering policies and design criteria. The DCM shall be implemented by the City as written or as amended in the future. To the extent the granting of DCM variances is not precluded by the EPA or CDPHE, the City shall provide Pueblo County with notice of, and an opportunity to comment upon, any DCM variance request before a decision is made on the variance request.

G. ***County Forbearance.*** During the term of this Agreement, and so long as the City and Utilities remain in compliance with the expenditure requirements of paragraph III.A above and the Capital Improvement Program requirements of paragraph III.B above, Pueblo County agrees not to seek other remedies under the SDS 1041 Permit related to the defunding of SWENT or the adequacy of the City stormwater program expenditures, and agrees not to seek any modification or amendment of the SDS 1041 Permit so as to incorporate any additional requirements for the City related to the defunding of SWENT or the adequacy of the City stormwater program expenditures; provided, however, that Pueblo County shall retain the right to assert that Utilities and the City or the other SDS Participants are not in compliance with Conditions 19 and 23 or other term and condition of the SDS 1041 Permit, with specific reference to the requirements thereof and the amount of monies necessary to meet those requirements, and Pueblo County reserves all of its rights and remedies for any failure by Utilities, the City or the other SDS Participants to comply with the SDS 1041 Permit or any other applicable law, regulatory permit, governmental requirement, or cause of action. Similarly, the City and Utilities retain the right to assert all arguments and defenses concerning the County's

interpretation of its authority under the SDS 1041 Permit or any other applicable law, regulatory permit, governmental requirement or cause of action.

H. ***Dispute Resolution.*** Except as provided in paragraphs III.A(4) and III(B)(2)(b) (Enforcement of Funding Obligations and Identification of Capital Projects), if any future disagreements arise between the Parties concerning the interpretation or compliance with the provisions of this Agreement, the nature of the disagreement shall be set forth in writing and the matter shall be resolved according to the same process for Dispute Resolution as set forth in Condition No. 29 of the SDS 1041 Permit. In the event the Parties are not successful in resolving the disagreement in accordance with the Dispute Resolution process, the Parties shall be free to pursue all available judicial or other remedies, including for damages, declaratory, equitable, or injunctive relief, for specific performance, or under the SDS 1041 Permit or applicable federal, state or local regulations. The Parties shall expedite any such proceedings in order to obtain a prompt resolution. The venue for any judicial proceedings shall be the District Court of Pueblo County.

IV. OTHER PROVISIONS

A. ***Notices.*** All notices and other communications that are required or permitted to be given to the Parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by email, by overnight courier, or by certified mail, postage prepaid, return receipt requested. Notice delivered in person or by courier or by email shall be effective upon such delivery; notice provided through the U.S. Mail shall be effective three days after deposit in the U.S. Mail. Unless otherwise specifically provided in this Agreement, notice shall

be given to the receiving party at the following addresses, or to such other address or person as such party may have given to the other by subsequent notice pursuant to this Paragraph:

(1) If to the City: Mayor, City of Colorado Springs, 30 S. Nevada Ave., Colorado Springs, CO 80903; and also to: City Attorney, City of Colorado Springs, Colorado, 30 S. Nevada, Suite 501, Colorado Springs, CO 80901-1575.

(2) If to Utilities: Chief Executive Officer, Colorado Springs Utilities, 121 South Tejon Street, Fourth Floor, P.O. Box 1103, Mail Code 946, Colorado Springs, CO 80947-0946; and also to: City Attorney, City of Colorado Springs, Colorado, 30 S. Nevada, Suite 501, Colorado Springs, CO 80901-1575.

(3) If to Pueblo County: Chair, Board of County Commissioners of Pueblo County, 215 W. 10th Street, Pueblo, CO 81003; and also to: Pueblo County Attorney, 215 W. 10th Street, Pueblo, CO 81003.

B. **Assignment.** This Agreement may not be assigned by any party without the prior written consent of the other Parties.

C. **Judicial Remedies and Venue.** The venue and jurisdiction for all judicial actions between the parties arising out of this Agreement shall be the District Court of Pueblo County. Each Party shall bear its own costs, including attorney fees, associated with such litigation, except as otherwise provided in Paragraph III.A(4) for the City's and Utilities' breach of their expenditure obligations. No adequate remedy at law may exist for a breach of the terms contained in this Agreement, and any injured party may suffer irreparable harm as a result of any such breach. Therefore, in the event of a breach or a threatened breach of the terms of this Agreement, in addition to any other rights and remedies the Parties may have, the injured party

shall be entitled to such specific performance or injunctive relief restraining the breaching party from doing any act in violation, or compelling performance, of its obligations hereunder.

D. ***Entire Agreement; Amendments.*** This Agreement (together with any Exhibits hereto, which are hereby incorporated by this reference) constitutes the entire agreement between the Parties relating to the subject matter hereof. Except as otherwise specifically provided for herein, this Agreement may be altered, amended, or revoked only by an instrument in writing signed by the Parties. Email and all other electronic (including voice) communications from either Party in connection with this Agreement are for informational purposes only. No such communication is intended by either Party to constitute either an electronic record or an electronic signature, or to constitute any agreement by either Party to conduct a transaction by electronic means. Any such intention or agreement is hereby expressly disclaimed.

E. ***Applicable Law.*** This Agreement shall be governed by and construed according to the laws of the State of Colorado.

F. ***Waiver.*** The failure of one of the Parties to insist upon the strict performance of any provision of this Agreement or to exercise any right, power, or remedy upon a breach thereof shall not constitute a waiver of that or any other provision of this Agreement or limit that party's right thereafter to enforce any provision or exercise any right.

G. ***Captions.*** All captions contained in this Agreement are for convenience only and are of no relevance to the interpretation or effect of this Agreement.

H. ***Counterparts.*** This Agreement may be executed in counterparts, each of which shall constitute an original and all of which, when taken together, shall constitute one agreement.

I. ***Parties Bound by Agreement.*** This Agreement is binding upon the Parties hereto and upon their respective legal representatives and successors.

J. **Interpretation.** All section, paragraph, and exhibit references used in this Agreement are to this Agreement unless otherwise specified. All exhibits attached to this Agreement constitute a part of this Agreement and are incorporated herein.

K. **Legal Authority.** This Agreement to cooperate and contract between the Parties is authorized and encouraged by the State of Colorado Constitution and statutes, including Colo. Const. Art. XIV, Sec. 18, and C.R.S. § 29-1-201, *et seq.* and by Pueblo County's statutory authority, regulations, and permitting authority, and by the City's constitutional home-rule authority, City Charter authority, and statutory authority.

L. **Authorizations.** The governing bodies of each of the Parties have authorized the execution of this Agreement. The Parties assure and represent that they possess the legal authority, pursuant to any proper, appropriate and official motion, resolution or action passed or taken, to enter into this Agreement. The person or persons signing and executing this Agreement do hereby warrant that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind their principals to all the terms, performances and provisions herein set forth.

M. **No Third Party Beneficiaries.** This Agreement is intended to describe the rights and responsibilities of and between the Parties and is not intended to, and shall not be deemed to confer any rights upon any persons or entities not named as parties, nor to limit in any ways the powers and responsibilities of the Parties or any other entity not a party hereto.


N. **Appropriations.** This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City. Nothing herein shall constitute, nor be deemed to constitute, the creation of a debt or multi-year fiscal obligation or an obligation of future appropriations by the City, contrary to Article X, § 20 of the Colorado


Constitution, or any other constitutional, statutory, or charter debt limitation. The City agrees to use good faith efforts to seek the appropriation of sufficient funds to allow the City to fully and timely perform the City's obligations under this Agreement for each City fiscal year that occurs during the term of this Agreement. The City and Utilities acknowledge that sufficient funds for their financial obligations for fiscal year 2016 have been appropriated prior to the date of this Agreement. Notwithstanding the above, with respect to any financial obligation of Utilities under this Agreement, Utilities acknowledges that its commitments under this Agreement, including paragraph III.A(3), are not contrary to any debt or appropriation limitations of the Colorado Constitution, the Charter of the City, statutes or other law.

Signature Page

The City of Colorado Springs

Colorado Springs Utilities, an enterprise of
The City of Colorado Springs

By: 
John Suthers
Mayor

By: 
Jerry Forte
Chief Executive Officer


Date Signed: 4/27/2016

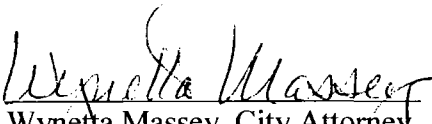
Date Signed: April 29, 2016

ATTEST:

Approved as to Form:

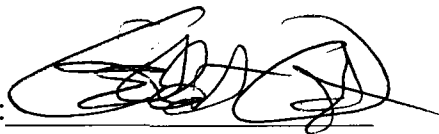

Sarah B. Johnson, CMC, City Clerk

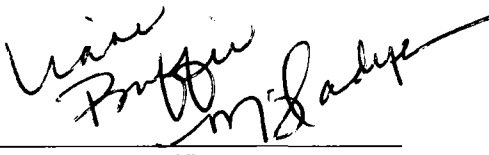



Wynetta Massey, City Attorney

ATTEST:

Pueblo County, Colorado

By: 
Gilbert Ortiz
County Clerk and Recorder

By: 
Liane "Buffie" McFayden
Chair, Board of County Commissioners

Date signed: 02 May 2016

Approved as to Form:

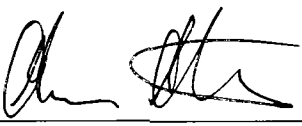

Gregory J. Styduhar, County Attorney

Exhibit A

City Capital Project Prioritization (2016-2035)
Colorado Springs Stormwater Program Implementation Plan

Project Name	Total Estimated Capital Cost (2016\$) ^(6,7)	Prioritization Criteria (see notes below)									Priority Ranking			Comments	Projected Project Dates
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Downstream Benefit" Ranking	City Priority Ranking		
2. Sand Creek Pond 3	\$3,076,000			X		X	X	X	X	4	Yes	1	1	Readiness for Implementation. Already out to bid; to be awarded in January 2016.	2016
0. FEMA Projects ¹⁾	\$2,081,000	X	X	X		X	X	X		3	Yes	6	2	Readiness for Implementation. On-going.	2016-2018
8. King Street Detention Pond (WWE CS-013)	\$250,000			X	X	X		X	X	3	Yes	7	3	Readiness for Implementation. Can re-use existing design.	2016-2017
13. Water Quality Project--America the Beautiful Park Detention Basin ²⁾	\$2,500,000			X		X		X	X	3	Yes	9	4	Readiness for Implementation. Olympics Museum under construction in 2016.	2016-2017
6. USAFA Drainages (Northgate Area)	\$2,000,000	X		X				X		1	Yes	16	5	Multiple impacts and sites. CSU will do force main protection in project area in the future.	2016-2017
1. Emergency Stormwater Projects ³⁾	\$7,500,000	X	X	X						0	Yes		6	Readiness for Implementation. On-going annual budget.	2016-2020
7. Fairfax Tributary Detention Pond (WWE CS-330)	\$398,000			X	X	X	X	X	X	4		5	7		2016-2017
5. Downtown Drainage Improvements	\$2,250,000	X	X							0	Yes		8	Reduce downtown flooding. Increase pipe size in Pikes Peak Avenue. Conduct during road project scheduled in same area during 2016.	2016-2017
26. Sand Creek Stabilization south of Platte (WWE CS-018) ⁵⁾	\$5,290,000	X		X				X		1		22	9	High priority. FEMA grant funding (see footnote 5).	2016-2018
65. Cottonwood Creek Detention Basins (PR-2,6,7,9,11,14)	\$2,740,000					X	X	X	X	4		2	10		2017-2019
31. Rangewood Tributary Detention Pond (WWE CS-333)	\$750,000			X	X	X	X	X	X	4		3	11	Cottonwood Creek. Bundle with Project 20 (located next to each other).	2017-2018
52. Storage Bridle Pass Drive Construct new pond to improve 2 yr flows (CS-332)	\$1,591,000			X	X	X	X	X	X	4		4	12	Include channel improvements.	2017-2019
9. South Pine Creek Detention Pond (WWE CS-335)	\$461,000			X	X			X	X	2		14	13	Cottonwood Creek	2018-2019
15. Citadel Mall Neighborhood Improvements (CS-374)	\$1,053,000	X	X	X						0	Yes		14	Localized flooding. Design to evaluate detention retrofit.	2018-2019

Exhibit A

Project Name	Total Estimated Capital Cost (2016\$) ^{(6) (7)}	Prioritization Criteria (see notes below)									Priority Ranking			Comments	Projected Project Dates	
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Down-stream Benefit" Ranking	City Priority Ranking			
23. North Chelton Road (CS-057)	\$1,370,000		X	X	X						0	Yes		15	Localized flooding.	2018-2019
11. Camp Creek--Phase 1 (WWE CS-002 and CS-003) (Redefined) ⁴⁾	\$4,356,000	X	X	X						X	1	Yes	18	16	Readiness for Implementation. Channel improvements. Cost shown is for downstream structure and channel restoration/lining removal.	2018-2019
41. Storage Wagner Park Detention - downstream of Bijou Detention Storage Required (CS-360)	\$704,000			X	X	X				X	X		8	17	Spring Creek drainage	2018-2019
38. Storage Austin Bluffs Parkway upstream of Research (CS-331)	\$754,000			X	X	X				X	X		10	18	Cottonwood Creek drainage	2019-2020
51. Storage Cottonwood Park (west side) (CS-334)	\$3,768,000			X	X	X				X	X		11	19	Cottonwood Creek drainage	2019-2021
34. Storage Sand Creek Detention Pond 2 Complete Detention Pond 2 on Sand Creek south of Barnes (CS-105)	\$1,025,000					X				X	X		12	20	Currently have 50 year protection. Build out to 100-year capacity.	2019-2021
24. Park Vista (Siferd Low Water Crossing) (CS-232)	\$3,750,000	X		X								Yes		21	Localized flooding. Evaluate property acquisition and detention storage.	2020-2022
70. CS-239 Grade Control Upper Hancock Channel - Hancock to Academy, 78+33 to	\$1,236,000					X	X						13	22	Desire for provision for regular sediment removal.	2020-2022
16. North Douglas Natural Channel	\$3,500,000	X	X					X	X			Yes	15	23	Redefine project to address reach between I-25 and railroad to east. City has conceptual design for channel stabilization project.	2020-2021
19. Galley Road Channel (WWE CS-258) Sand Creek between Galley and Platte Avenue	\$2,000,000	X		X				X					19	24	Portions of original scope have been completed by CSU. Additional reach to be improved.	2020-2022
21. Monument Creek at Talemine (CS-011)	\$1,778,000	X		X				X					17	25		2020-2021
35. Side Channel Sand Creek - segment 107, reach SC-5 1700lf channel stabilization (CS-261)	\$1,242,000	X		X				X					20	26		2021-2025
39. Grade Control Palmer Park Channel - Galley Rd. to Palmer Park, 300+00 to (CS-259)	\$6,594,000	X		X				X					21	27	On Sand Creek drainage.	2021-2025
28. Shooks Run Channel - Cache La Poudre St. to Patty Jewett Golf Course (CS-326)	\$3,500,000	X	X	X						X			23	28	Bundled and phased with other Shooks Run.	2021-2025
77. CS-265 Grade Control Sand Creek Upper West Fork - Maizeland to South Carefree 3 drop structures	\$420,000							X					24	29		2021-2025

Exhibit A

Project Name	Total Estimated Capital Cost (2016\$) ^{(6) (7)}	Prioritization Criteria (see notes below)									Priority Ranking			Comments	Projected Project Dates		
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Downstream Benefit" Ranking	City Priority Ranking				
76. CS-254 Channel/Grade Control Sand Creek Upper West Fork - Galley to Murray 1730lf channel stabilization, 2 drop structures	\$2,006,000						X					1		25	30		2021-2025
75. CS-262 Channel/Grade Control Upper Sand Creek - W. Fork to Palmer Park Blvd. 1550lf channel stabilization, w/drop structures	\$1,192,000						X					1		26	31		2021-2025
74. CS-252 Channel Sand Creek Lower West Fork - Emory to Platte Ave. 1000lf channel stabilization	\$2,383,000						X					1		27	32		2021-2025
73. CS-025 Channel/Grade Control Sand Creek West Fork - Main stem to Wooten Construct drop structures & streambank protection	\$2,206,000						X					1		28	33		2021-2025
61. Channel/Grade Control Sand Creek (CS-040)	\$3,507,000	X		X			X					1		29	34		2021-2025
60. Channel/Grade Control Sand Creek (CS-039)	\$3,908,000	X		X			X					1		30	35		2021-2025
71. CS-246 Channel/Grade Control Sand Creek Lower Center Tributary - No Name to East Fork	\$458,000						X					1		31	36		2021-2025
62. Channel/Grade Control East Fork of Sand Creek (CS-041)	\$7,464,000	X		X			X					1		32	37		2021-2025
55. Grade Control Fountain Blvd. Channel - Chelton Rd. to Fountain Blvd., (CS-243)	\$2,553,000	X		X			X					1		33	38	Portions of original scope have been completed by CSU	2026-2035
54. Grade Control Chelton Road Channel - Academy to Chelton, 96+97 (CS-241)	\$1,593,000	X		X			X					1		34	39	On main stem of Sand Creek.	2026-2035
69. CS-240 Channel/Storm Drain Lower Sand Creek Tributaries 2,3, and 4 - Main Stem to Academy	\$867,000						X					1		35	40		2026-2035
67. CS-238 Channel/Grade Control Lower Hancock Channel - Downstream 1500lf channel stabilization, 2 drop structures	\$1,247,000						X					1		36	41		2026-2035
66. CS-268 Channel/Grade Control Las Vegas St. Channel - ATSF RR to Peterson Fld Trib. 700lf channel stabilization, 2 drop structures	\$1,545,000						X					1		37	42		2026-2035
72. CS-247 Channel/Grade Control Sand Creek Middle Center Tributary - Powers to No Name 300lf channel stabilization, 3 drop structures	\$175,000						X					1		38	43		2026-2035

Exhibit A

Project Name	Total Estimated Capital Cost (2016\$) ^{(6) (7)}	Prioritization Criteria (see notes below)									Priority Ranking			Comments	Projected Project Dates			
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Down-stream Benefit" Ranking	City Priority Ranking					
68. CS-130 Channel Hancock Expressway Channel East of Astrozon Undermining of infrastructure.	\$72,000								X				1		39	44		2026-2035
20. Gold Medal Point Channel (WWE CS-339)	\$750,000	X		X					X				1		40	45	Cottonwood Creek. Could bundle with Project 31 (located next to each other)	2026-2035
57. Channel/Grade Control Cottonwood Creek - Academy to Union Construct flood control and stream restoration projects (CS-004)	\$5,840,000	X		X					X				1		41	46	Portions of original scope may have been completed by CSU	2026-2035
59. Channel/Grade Control Cottonwood Creek - Monument Creek to Academy Construct flood control and stream restoration projects. (CS-005)	\$13,232,000	X		X					X				1		42	47		2026-2035
58. Channel/Grade Control Rangewood Channel - Main Stem to Balsam 7400lf channel stabilization, w/drop structures (CS-343)	\$5,066,000	X		X					X				1		43	48		2026-2035
63. Channel/Grade Control Cottonwood Creek - Rangewood to Woodmen 5300lf channel stabilization, w/drop structures (CS-337)	\$3,768,000	X		X					X				1		44	49		2026-2035
45. Channel/Grade Control Fountain Creek - W. Cimmaron St. to N end of Drake Power (CS-306)	\$1,298,000	X		X					X				1		45	50		2026-2035
46. Channel/Grade Control Fountain Creek - N end Drake Power Plant to south end of (CS-307)	\$1,941,000	X		X					X				1		46	51		2026-2035
18. Fountain Creek - Drake Power Plant to Shooks Run (WWE CS-308 and CS-309)	\$2,250,000	X		X					X				1		47	52		2026-2035
43. Channel/Grade Control Fountain Creek - Shooks Run to Fountain Mutual Canal Channel stabilization, 2 drop structures (CS-310)	\$11,854,000	X		X					X				1		48	53		2026-2035
53. Channel/Grade Control Fountain Creek - Fountain Mutual Canal to US 24 Bypass Channel stabilization, 2 drop structures (CS-311)	\$9,921,000	X		X					X				1		49	54		2026-2035
36. Channel/Grade Control Fountain Creek - US 24 Bypass to Spring Creek Channel stabilization, 2 drop structures (CS-312)	\$4,636,000	X		X					X				1		50	55		2026-2035
50. Channel/Grade Control Fountain Creek - Spring Creek to Mobile Home Park Channel stabilization, 3 drop structures (CS-313)	\$3,803,000	X		X					X				1		51	56		2026-2035
32. Channel/Grade Control Fountain Creek - Mobile Home Park to N end El Pomar Sports (CS-314)	\$4,235,000	X		X					X				1		52	57	Fountain Creek.	2026-2035
33. Channel/Grade Control Fountain Creek - N end El Pomar Sports Park to S end El (CS-315)	\$4,551,000	X		X					X				1		53	58	Fountain Creek.	2026-2035

Exhibit A

Project Name	Total Estimated Capital Cost (2016\$) ^{(6) (7)}	Prioritization Criteria (see notes below)									Priority Ranking			Comments	Projected Project Dates			
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Down-stream Benefit" Ranking	City Priority Ranking					
22. Monument Creek Mobile Home Park (CS-139)	\$478,000	X		X				X					1		54	59	CSU has done partial work in the area, but not the complete project.	2026-2035
64. Channel/Grade Control Chelton Dr. Channel - Chelton Dr to Airport Rd 2400lf channel stabilization, 2 drop structures (CS-359)	\$1,487,000	X		X				X					1		55	60		2026-2035
25. Pine Creek Outfall into Monument Creek (CS-047)	\$1,250,000	X		X				X					1		56	61		2026-2035
49. Channel/Grade Control Templeton Gap Rd. Channel - Powers to Tutt 4400lf channel stabilization, w/drop structures (CS-342)	\$3,077,000	X		X				X					1		57	62		2026-2035
40. Storage Mount Woodmen Court Drainage Sedimentation pond outfalls directly onto private property (CS-064)	\$515,000	X	X							X			1		58	63		2026-2035
12. Shooks Run Improvements (CS-319 through CS-329 minus CS-326)	\$3,000,000	X	X	X						X			1		59	64	Bundled and phased with other Shooks Run	2026-2035
27. Shooks Run Channel - Bijou Street Culvert & Channel Stabilization (CS-054a)	\$1,500,000	X	X	X						X			1		60	65	Bundled and phased with other Shooks Run	2026-2035
29. Shooks Run Improvements - Phase 3 (CS-054b)	\$1,500,000	X	X	X						X			1		61	66	Bundled and phased with other Shooks Run	2026-2035
4. Old Annexation Drainage Improvements	\$2,800,000	X	X	X	X								0			67	Five neighborhoods experiencing significant flooding.	2026-2035
14. Briargate Drainage Improvements (CS-344)	\$1,641,000	X	X	X									0			68	Replacing failing infrastructure.	2026-2035
30. Skyway Area Improvements (CS-235 & CS-296)	\$457,000	X	X		X								0			69		2026-2035
48. Channel/Storm Drain Columbia Road Drainage (CS-045)	\$2,088,000	X	X	X									0			70		2026-2035
17. Dry Creek Channel (WWE CS-007)	\$1,386,000	X		X	X								0			71	Increasing channel capacity.	2026-2035
42. Channel/Grade Control Sand Creek Main Stem-Phase III - Fountain Creek Confluence (CS-106)																	Not on the SNA "Validated" project list-- Appears to overlap with other validated SNA projects and may be redundant.	
47. Channel Templeton Gap Floodway Reconstruct- levee and floodway (CS-021)																	Delete - Channel Lining; Replacement of Existing Facilities. Removed from list, per WWE (12/16/15).	

Exhibit A

Project Name	Total Estimated Capital Cost (2016\$) ^{(6) (7)}	Prioritization Criteria (see notes below)								Priority Ranking			Comments	Projected Project Dates	
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Downstream Benefit" Ranking			City Priority Ranking
78. CS-264 Channel Sand Creek Upper West Fork - Raindrop to North Carefree 2200lf channel stabilization														Remove from list, per WWE (12/16/15).	
56. Grade Control Palmer Park Channel - Galley Rd. to Palmer Park, 300+00 to (CS-259)														Redundant with Project 39. Delete.	
10. Erindale Drainage Improvements														Change to an "Emergency" project. Likely a maintenance effort. Remove from this capital projects list.	
44. Storage Spring Run Detention Ponds (CS-051)														Not on the SNA "Validated" project list--remove.	
3. Dam Repairs														Remove from list, per WWE (03/30/16). To be completed with Emergency Stormwater Projects funding.	
37. Channel Rockrimmon Channel at Rockrimmon/Pro Rodeo Int. Repair damage to channel at outlet (CS-222)														Area identified in previous MS4 inspections. Project being completed with Emergency Stormwater Project funding in 2016. Removed from list following 03/30/16 Meeting with WWE.	

Prioritization Criteria:

1. Protect local property and public safety
2. Repair/replace failing infrastructure
3. Improve appearance and/or enhance community
4. Distribute projects within the City

Downstream benefits:

5. Enhance sediment/debris capture and control (e.g., debris basins)
6. Reduce sediment generation/Enhance soil stewardship (e.g., bank stabilization, channel stabilization, channel grade control, floodplain preservation/enhancement)
7. Improve water quality
8. Provide detention (i.e., reduce downstream flows)

Footnotes:

- 1) Total anticipated FEMA Grant City match portion through 2018: Budgeted \$1,081,000 (2016); \$500,000 (2017); \$500,000 (2018).
- 2) Total Capital Cost includes 5 detention ponds, one per year at \$500,000 each between 2016-2020. First pond to be initiated with America the Beautiful Park detention basin in 2016.
- 3) Emergency Stormwater Projects list total capital cost (2016-2020); budgeted at \$1.5 Million per year ongoing.
- 4) Additional channel lining removal projects along Camp Creek channel may be done as funding becomes available.
- 5) Funding for capital cost shown is FEMA grant funding and City grant match encumbered in 2015. No 2016 City capital contribution for this project.
- 6) See 2016 and 2016-2020 Project lists for additional detail on project funding.
- 7) Total estimated project capital cost is shown for each project. Total Stormwater Control Program yearly capital expenditures depend on the number of projects underway and the project phase(s) performed in a given year. Total yearly capital expenditures will be presented in the annual reporting of the City's Stormwater Control Program performance.

Exhibit B

City Capital Project Prioritization (2016)
Colorado Springs Stormwater Program Implementation Plan

Prioritization Criteria (see notes below)

Priority Ranking

Project Name	Total Estimated Capital Cost (2016\$) ⁴⁾	City Capital Contribution (2016\$)	Additional Funding (Grants) (2016\$)	Total Funding (2016\$)	Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Down-stream Benefit" Ranking	City Priority Ranking	Comments	Projected Project Dates
2. Sand Creek Pond 3	\$3,076,000	\$3,076,000	\$0	\$3,076,000			X		X	X	X	X	4	Yes	1	1	Readiness for Implementation. Already out to bid; to be awarded in January 2016.	2016
0. FEMA Projects ¹⁾	\$2,081,000	\$2,081,000	\$3,827,000	\$5,908,000	X	X	X		X	X	X		3	Yes	6	2	Readiness for Implementation. On-going.	2016-2018
8. King Street Detention Pond (WWE CS-013)	\$250,000	\$250,000	\$0	\$250,000			X	X	X		X	X	3	Yes	7	3	Readiness for Implementation. Can re-use existing design.	2016-2017
13. Water Quality Project--America the Beautiful Park Detention Basin ²⁾	\$2,500,000	\$2,500,000	\$0	\$2,500,000			X		X		X	X	3	Yes	9	4	Readiness for Implementation. Olympics Museum under construction in 2016.	2016-2017
6. USAFA Drainages (Northgate Area)	\$2,000,000	\$2,000,000	\$524,250	\$2,524,250	X		X			X			1	Yes	16	5	Multiple impacts and sites. CSU will do force main protection in project area in the future.	2016-2017
1. Emergency Stormwater Projects ³⁾	\$7,500,000	\$7,500,000	\$0	\$7,500,000	X	X	X						0	Yes		6	Readiness for Implementation. On-going annual budget.	2016-2020
7. Fairfax Tributary Detention Pond (WWE CS-330)	\$398,000	\$398,000	\$0	\$398,000			X	X	X	X	X	X	4		5	7		2016-2017
5. Downtown Drainage Improvements	\$2,250,000	\$2,250,000	\$0	\$2,250,000	X	X							0	Yes		8	Reduce downtown flooding. Increase pipe size in Pikes Peak Avenue. Conduct during road project scheduled in same area during 2016.	2016-2017
26. Sand Creek Stabilization south of Platte (WWE CS-018)	\$5,290,000	\$0	\$5,290,000	\$5,290,000	X		X			X			1		22	9	High priority. FEMA grant funding and City grant match encumbered in 2015. No 2016 City capital contribution for this project.	2016-2018

Prioritization Criteria:

1. Protect local property and public safety
2. Repair/replace failing infrastructure
3. Improve appearance and/or enhance community
4. Distribute projects within the City

Downstream benefits:

5. Enhance sediment/debris capture and control (e.g., debris basins)
6. Reduce sediment generation/Enhance soil stewardship (e.g., bank stabilization, channel stabilization, channel grade control, floodplain preservation/enhancement)
7. Improve water quality
8. Provide detention (i.e., reduce downstream flows)

Footnotes:

- 1) Total anticipated FEMA Grant City match portion through 2018: Budgeted \$1,081,000 (2016); \$500,000 (2017); \$500,000 (2018). Additional funding for 2016 only.
- 2) Total Capital Cost includes 5 detention ponds, one per year at \$500,000 each between 2016-2020. First pond to be initiated with America the Beautiful Park detention basin in 2016.
- 3) Emergency Stormwater Projects list total capital cost (2016-2020); budgeted at \$1.5 Million per year ongoing.
- 4) Total estimated project capital cost is shown for each project. Total Stormwater Control Program yearly capital expenditures depend on the number of projects underway and the project phase(s) performed in a given year. Total yearly capital expenditures will be presented in the annual reporting of the City's Stormwater Control Program performance.

Exhibit C

City Capital Project Prioritization (2016-2020)
Colorado Springs Stormwater Program Implementation Plan

Prioritization Criteria (see notes below)

Priority Ranking

Project Name	Total Estimated Capital Cost (2016\$) ⁵⁾	City Capital Contribution (2016\$)	Additional Funding (Grants) (2016\$)	Total Funding (2016\$)	Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention	Downstream Priority Score	Critical City Project	WWE "Down-stream Benefit" Ranking	City Priority Ranking	Comments	Projected Project Dates
2. Sand Creek Pond 3	\$3,076,000	\$3,076,000	\$0	\$3,076,000			X		X	X	X	X	4	Yes	1	1	Readiness for Implementation. Already out to bid; to be awarded in January 2016.	2016
0. FEMA Projects ¹⁾	\$2,081,000	\$2,081,000	\$3,827,000	\$5,908,000	X	X	X		X	X	X		3	Yes	6	2	Readiness for Implementation. On-going.	2016-2018
8. King Street Detention Pond (WWE CS-013)	\$250,000	\$250,000	\$0	\$250,000			X	X	X		X	X	3	Yes	7	3	Readiness for Implementation. Can re-use existing design.	2016-2017
13. Water Quality Project--America the Beautiful Park Detention Basin ²⁾	\$2,500,000	\$2,500,000	\$0	\$2,500,000			X		X		X	X	3	Yes	9	4	Readiness for Implementation. Olympics Museum under construction in 2016.	2016-2017
6. USAFA Drainages (Northgate Area)	\$2,000,000	\$2,000,000	\$524,250	\$2,524,250	X		X			X			1	Yes	16	5	Multiple impacts and sites. CSU will do force main protection in project area in the future.	2016-2017
1. Emergency Stormwater Projects ³⁾	\$7,500,000	\$7,500,000	\$0	\$7,500,000	X	X	X						0	Yes		6	Readiness for Implementation. On-going annual budget.	2016-2020
7. Fairfax Tributary Detention Pond (WWE CS-330)	\$398,000	\$398,000	\$0	\$398,000			X	X	X	X	X	X	4		5	7		2016-2017
5. Downtown Drainage Improvements	\$2,250,000	\$2,250,000	\$0	\$2,250,000	X	X							0	Yes		8	Reduce downtown flooding. Increase pipe size in Pikes Peak Avenue. Conduct during road project scheduled in same area during 2016.	2016-2017
26. Sand Creek Stabilization south of Platte (WWE CS-018)	\$5,290,000	\$0	\$5,290,000	\$5,290,000	X		X			X			1		22	9	High priority. FEMA grant funding and City grant match encumbered in 2015. No 2016 City capital contribution for this project.	2016-2018
65. Cottonwood Creek Detention Basins (PR-2,6,7,9,11,14)	\$2,740,000	\$2,740,000	\$0	\$2,740,000					X	X	X	X	4		2	10		2017-2019
31. Rangewood Tributary Detention Pond (WWE CS-333)	\$750,000	\$750,000	\$0	\$750,000			X	X	X	X	X	X	4		3	11	Cottonwood Creek. Bundle with Project 20 (located next to each other).	2017-2018
52. Storage Bridle Pass Drive Construct new pond to improve 2 yr flows (CS-332)	\$1,591,000	\$1,591,000	\$0	\$1,591,000			X	X	X	X	X	X	4		4	12	Include channel improvements.	2017-2019
9. South Pine Creek Detention Pond (WWE CS-335)	\$461,000	\$461,000	\$0	\$461,000			X	X			X	X	2		14	13	Cottonwood Creek	2018-2019
15. Citadel Mall Neighborhood Improvements (CS-374)	\$1,053,000	\$1,053,000	\$0	\$1,053,000	X	X	X						0	Yes		14	Localized flooding. Design to evaluate detention retrofit.	2018-2019
23. North Chelton Road (CS-057)	\$1,370,000	\$1,370,000	\$0	\$1,370,000		X	X	X					0	Yes		15	Localized flooding.	2018-2019

Exhibit C

Prioritization Criteria (see notes below)

Priority Ranking

Project Name	Total Estimated Capital Cost (2016\$) ⁵⁾	City Capital Contribution (2016\$)	Additional Funding (Grants) (2016\$)	Total Funding (2016\$)	Prioritization Criteria								Downstream Priority Score	Critical City Project	WWE "Down-stream Benefit" Ranking	City Priority Ranking	Comments	Projected Project Dates	
					Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention							
11. Camp Creek--Phase 1 (WWE CS-002 and CS-003) (Redefined) ⁴⁾	\$4,356,000	\$4,356,000	\$0	\$4,356,000	X	X	X				X			1	Yes	18	16	Readiness for Implementation. Channel improvements. Cost shown is for downstream structure and channel restoration/lining removal.	2018-2019
41. Storage Wagner Park Detention - downstream of Bijou Detention Storage Required (CS-360)	\$704,000	\$704,000	\$0	\$704,000			X	X	X		X	X		3		8	17	Spring Creek drainage	2018-2019
38. Storage Austin Bluffs Parkway upstream of Research (CS-331)	\$754,000	\$754,000	\$0	\$754,000			X	X	X		X	X		3		10	18	Cottonwood Creek drainage	2019-2020
51. Storage Cottonwood Park (west side) (CS-334)	\$3,768,000	\$3,768,000	\$0	\$3,768,000			X	X	X		X	X		3		11	19	Cottonwood Creek drainage	2019-2021
34. Storage Sand Creek Detention Pond 2 Complete Detention Pond 2 on Sand Creek south of Barnes (CS-105)	\$1,025,000	\$1,025,000	\$0	\$1,025,000					X		X	X		3		12	20	Currently have 50 year protection. Build out to 100-year capacity.	2019-2021
24. Park Vista (Siferd Low Water Crossing) (CS-232)	\$3,750,000	\$3,750,000	\$0	\$3,750,000	X		X							0	Yes		21	Localized flooding. Evaluate property acquisition and detention storage.	2020-2022
70. CS-239 Grade Control Upper Hancock Channel - Hancock to Academy, 78+33 to	\$1,236,000	\$1,236,000	\$0	\$1,236,000					X	X				2		13	22	Desire for provision for regular sediment removal.	2020-2022
16. North Douglas Natural Channel	\$3,500,000	\$3,500,000	\$0	\$3,500,000	X	X				X	X			2	Yes	15	23	Redefine project to address reach between I-25 and railroad to east. City has conceptual design for channel stabilization project.	2020-2021
19. Galley Road Channel (WWE CS-258) Sand Creek between Galley and Platte Avenue	\$2,000,000	\$2,000,000	\$0	\$2,000,000	X		X			X				1		19	24	Portions of original scope have been completed by CSU. Additional reach to be improved.	2020-2022
21. Monument Creek at Talemene (CS-011)	\$1,778,000	\$1,778,000	\$0	\$1,778,000	X		X			X				1		17	25		2020-2021

Prioritization Criteria:

1. Protect local property and public safety
2. Repair/replace failing infrastructure
3. Improve appearance and/or enhance community
4. Distribute projects within the City

Downstream benefits:

5. Enhance sediment/debris capture and control (e.g., debris basins)
6. Reduce sediment generation/Enhance soil stewardship (e.g., bank stabilization, channel stabilization, channel grade control, floodplain preservation/enhancement)
7. Improve water quality
8. Provide detention (i.e., reduce downstream flows)

Footnotes:

- 1) Total anticipated FEMA Grant City match portion through 2018: Budgeted \$1,081,000 (2016); \$500,000 (2017); \$500,000 (2018). Additional funding for 2016 only.
- 2) Total Capital Cost includes 5 detention ponds, one per year at \$500,000 each between 2016-2020. First pond to be initiated with America the Beautiful Park detention basin in 2016.
- 3) Emergency Stormwater Projects list total capital cost (2016-2020); budgeted at \$1.5 Million per year ongoing.
- 4) Additional channel lining removal projects along Camp Creek channel may be done as funding becomes available.
- 5) Total estimated project capital cost is shown for each project. Total Stormwater Control Program yearly capital expenditures depend on the number of projects underway and the project phase(s) performed in a given year. Total yearly capital expenditures will be presented in the annual reporting of the City's Stormwater Control Program performance.

Colorado Springs Utilities Sanitary Sewer Creek Crossing Project Benefits
Colorado Springs Stormwater Program Implementation Plan

Prioritization Criteria (see notes below)

Project Name	Total Estimated Capital Cost (2016\$)	Prioritization Criteria								Comments	Projected Project Dates
		Protect Public Safety/Property	Improve Failing Infrastructure	Enhance Community	Distribute Within the City	Enhance Sediment/Debris Capture	Reduce Sediment Generation/Enhance Soil Stewardship	Improve Water Quality	Provide Detention		
1. Monument Creek Stabilization, Phase 2	\$820,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2016
2. Dry Creek Downstream of Dawson Drive	\$510,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2017-2018
3. Clear Spring Ranch Bank Stabilization	\$4,170,000	X	X				X			Bank Stabilization; Also provides some incidental water quality	2016-2017
4. North Douglas Creek upstream from Mark Dabbling Stabilization	\$251,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2016
5. South Douglas Creek at Sinton Pond, Crossing Elimination	\$176,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2016
6. Monument Branch Stabilization	\$1,100,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2016-2018
7. West Fork Sand Creek Drop Repair	\$500,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2018
8. Sand Creek stabilization at West Fork Confluence	\$600,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2018
9. Monument Creek Stabilization Upstream from Pikeview Intake	\$500,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2017-2018
10. Sand Creek Stabilization Upstream of Barnes Road	\$400,000	X	X				X			Channel Stabilization and Grade Control; Also provides some incidental water quality	2017-2018
Total (2016-2018)	\$9,027,000										

Prioritization Criteria:

1. Protect local property and public safety
2. Repair/replace failing infrastructure
3. Improve appearance and/or enhance community
4. Distribute projects within the City

Downstream benefits:

5. Enhance sediment/debris capture and control (e.g., debris basins)
6. Reduce sediment generation/Enhance soil stewardship (e.g., bank stabilization, channel stabilization, channel grade control, floodplain preservation/enhancement)
7. Improve water quality
8. Provide detention (i.e., reduce downstream flows)

3/31/16

Criteria for Prioritizing Stormwater Capital Projects

Colorado Springs Stormwater Program Implementation Plan

The purpose of this document is to define the criteria to be used in comparing and rating the capital projects to be implemented under the City of Colorado Springs' Stormwater Program.

Project Prioritization Criteria

The following eight criteria are not presented in any specific order with respect to priority or importance. The first four-criteria apply to benefits to stormwater infrastructure itself and the immediately adjacent areas.

Protect property and public safety

- This criterion relates to the basic function of containing stormwater within storm drains, channels and/or basins to minimize or reduce the risk of flooding-related property damages or endangering people's lives. Examples would be increasing channel capacity, stabilizing a channel embankment to prevent further erosion, or increasing the size of a stormwater detention basin. The DCM includes guidance on appropriate levels of protection for different drainage basin sizes and types of drainage infrastructure.

Repair/replace failing infrastructure

- This criterion applies to infrastructure that has reached the end of its useful life either due to age or damage, and must be repaired or replaced in order for the facility to continue to perform its intended function. An example would be a lined concrete channel where the concrete has deteriorated thereby allowing erosion of the subgrade materials.

Improve appearance and/or enhance the community

- Stormwater channels, detention/retention basins, and floodplains are often designed to be multi-use creating public amenities, providing visual enhancement, wildlife habitat and recreational opportunities. An example would be a stream that is kept in a relatively natural state and has a recreational trail next to it.

Distribute projects within the City

- Stormwater improvement needs exist throughout the City of Colorado Springs. It is important that capital improvements be made throughout the City, in order to provide stormwater protection benefits and a similar level of service to all areas within the City boundaries. This will enhance public support of stormwater control efforts. As such, the City must advance a program of stormwater capital improvements that achieve goals while providing improvements over time throughout the City.

Exhibit E

The following four criteria relate to enhancing the City's stormwater infrastructure and ability to reduce or eliminate sediment generation and transport, provide detention, and reduce the potential for flooding, thereby providing benefits to areas **downstream** of Colorado Springs within the Fountain Creek watershed.

Enhance sediment/debris capture and control

- Proposed sediment capture and control projects must facilitate settling of sediment and debris (e.g., downed vegetation) from channels that have elevated sediment and debris loads, or in watershed areas that contribute to those channels. The project must also provide a means for routine maintenance and removal of sediment captured and stored in the facility or drainage feature. The objective is to minimize the excess volume of sediment transported downstream.

Reduce sediment generation/enhance soil stewardship

- One key method to reduce sediment generation is through bank stabilization. The goal is to stabilize channel banks that are currently actively eroding and contributing additional sediment load to the channel. Eroding channel reaches where bank erosion is worsening, as documented with historic photographs, aerial imagery, or topographic data, will receive higher priority.
- A second key method to reduce sediment generation is through channel grade control. Proposed channel grade control projects must stabilize and/or reduce the gradient of channels that are currently degrading. The proposed channel grade control features must take into consideration the geomorphology of the channel and its equilibrium channel slope. Eroding channel reaches where channel incision is worsening, and/or where a substantial inventory of sediment is readily available to be mobilized, as documented with historic photographs, aerial imagery, or topographic data, will receive higher priority.
- Another key method to reduce sediment generation is to provide for channel restoration and/or floodplain preservation. To do so, proposed projects must preserve, expand, or otherwise enhance existing floodplains.
- A final key method to reduce sediment generation is to implement soil stewardship measures throughout the watershed to reduce soil erosion and the volume of sediment transported in the Fountain Creek channel.

Improve water quality

- Stormwater mobilizes and transports pollutants from the watershed surface and from the drainage system itself, and can adversely affect receiving water quality. Water quality improvement benefits are typically associated with projects such as stormwater basins with Water Quality Capture Volume (WQCV) features, Low Impact Development (LID) strategies such as bioretention and grass swales, preservation of riparian and wetland vegetation in drainageways to filter runoff and induce sediment deposition and other specific approaches where transport of pollutants in stormwater is reduced by facilitating the capture and removal of sediment and associated pollutants prior to being discharged downstream.

Provide detention

- Detention provides a method for reducing downstream peak flow rates such that post-development flows more closely resemble pre-development conditions in basins where detention is provided. Proposed detention projects will provide full spectrum detention as defined in the City of Colorado Springs Drainage Criteria Manual. Within the Fountain Creek watershed, proposed projects located in basins that have channels with active bed or bank erosion will receive higher priority.

The overarching objectives of the proposed projects, with respect to the Fountain Creek watershed, are: 1) to reduce peak flow rates, and 2) to reduce the transport of sediment in excess of natural equilibrium conditions. All proposed projects in the City of Colorado Springs must be designed in accordance with the requirements of the City of Colorado Springs Drainage Criteria Manual (DCM).

After ranking the projects using the eight criteria listed above, proposed projects may be assigned higher priority, following the process outlined in the Intergovernmental Agreement (IGA), by giving consideration to the following factors: 1) the project-being deemed critical due to project-specific factors (e.g., project is already underway, project is connected to another City Public Works project, project has FEMA or NRCS funding); 2) the project being located on a tributary to Fountain Creek or on the main stem of Fountain Creek in reaches with observable channel bed or bank erosion and/or sediment aggradation; and 3) the potential for the project-to be rapidly implemented (e.g., a design already being completed).