

**RESOLUTION NO. 37-16**

**A RESOLUTION OF SUPPORT FOR AN EXECUTIVE AGREEMENT BETWEEN THE MUNICIPAL GOVERNMENT OF THE CITY OF COLORADO SPRINGS AND COLORADO SPRINGS UTILITIES PERTAINING TO THE EXPENDITURE OF FUNDS FOR A STORMWATER CONTROL PROGRAM.**

**WHEREAS**, the City Council of the City of Colorado Springs, Colorado ("City Council"), pursuant to § 3-70 of the Charter of the City of Colorado Springs, and § 1.2.108 of the City of Colorado Springs Code of Ordinances, may act at legislative sessions by ordinance, resolution, or motion; and

**WHEREAS**, the City Council has approved by Resolution that certain intergovernmental agreement between the City of Colorado Springs and Pueblo County pertaining to the expenditure of funds for a stormwater control program (the "Stormwater IGA") on behalf of the City's municipal government (the "City") and Colorado Springs Utilities ("Utilities"); and

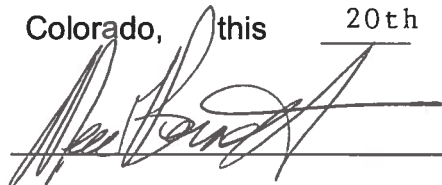
**WHEREAS**, the City and Utilities have agreed to enter into an executive agreement, attached hereto, to implement certain terms of the Stormwater IGA; and

**WHEREAS**, City Council finds that the attached executive agreement between the City and Utilities 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:**

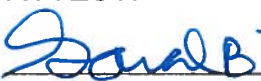
Section 1. The City Council hereby acknowledges its support of the executive agreement, attached hereto and incorporated herein by reference as Attachment "A", between the City and Utilities implementing certain terms of the Stormwater IGA.

Dated at Colorado Springs, Colorado, this 20<sup>th</sup> day of April, 2016.



Merv Bennett, Council President

ATTEST:



Sarah Johnson, City Clerk



**Executive Agreement Between the City of Colorado Springs  
and Colorado Springs Utilities**

WHEREAS, the City Council of the City of Colorado Springs has approved the execution of an Intergovernmental Agreement with Pueblo County through its Board of County Commissioners dated April 27, 2016 (“IGA”); and

WHEREAS, the IGA is designed to provide a description of commitments concerning the funding and implementation of stormwater control activities by the municipal government of the City of Colorado Springs (“City”) and Colorado Springs Utilities (“Utilities”); and

WHEREAS, the City has certain responsibilities for the provision of stormwater services within the City’s jurisdiction and holds an MS4 permit issued under the federal Clean Water Act and its state counterpart; and

WHEREAS, under the terms of the IGA, the City and Utilities have committed to the expenditure of certain funding amounts towards the Stormwater Control Program over a twenty (20) year period in five year increments of \$100M (2016-2020), \$110M (2021-2025), \$120M (2026-2030) and \$130M (2031-2035); and

WHEREAS, in meeting such commitments the City Council must approve annual appropriations therefore; and

WHEREAS, Utilities and the City have agreed to share in the cost of meeting the above-referenced funding commitments; and

WHEREAS, in order to secure the agreement of Pueblo County to the IGA, Utilities agreed to guarantee certain stormwater expenditures if the City is unable or unwilling to meet its annual Stormwater Control Program funding commitments as referenced in the IGA.

NOW, THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:


1. Utilities share of the Minimum Total Expenditures under paragraph III.A(1) of the IGA shall be an average of \$3M per year, with a Minimum Annual Expenditure of \$2.6M for each year of the twenty year period from 2016-2035 (not subject to escalation); provided, however, that Utilities total contribution shall be escalated in each of the five year payment increments by the same percentage as the overall Minimum Total Expenditures are escalated under such paragraph of the IGA. In other words, Utilities average contribution for each year of the second five years (2021-2025) would be approximately \$3.3M, for the third five years (2026-2030) approximately \$3.6M, and for the last five years (2031-2035) approximately \$3.9M.
2. As part of the annual appropriations ordinance or a supplemental appropriations ordinance, the City Council shall appropriate the remainder of the Minimum Total Expenditures under the IGA. If required City expenditures under the IGA are not appropriated in any given year, then Utilities shall meet its guaranty obligation under the IGA and the repayment to Utilities shall be made pursuant to Section 5, below. In the event Utilities is required to meet its guaranty obligation under the IGA, the parties will identify the specific steps that will be taken to implement repayment to Utilities pursuant to Section 5, below, and inform the City Council at the time Council is asked to approve an appropriations ordinance to receive and expend the guaranty obligation funds.
3. Utilities and the City shall each be responsible for timely assembling their portion of the data necessary for the completion of the annual reports to Pueblo County as referenced in paragraph III.A(2) of the IGA, with the City assuming the responsibility for the filing of the final report with the County.
4. The above referenced obligation of Utilities under the IGA shall extend beyond the initial twenty (20) year term, if necessary, as provided under paragraphs III.A(1) and III.B(3) of the IGA.
5. To the extent that Utilities is called upon to make any payment to the City pursuant to paragraph III.A(3) of the IGA, the City agrees that Utilities shall

have the right to deduct the total amount of each such payment made by Utilities from monthly "surplus payments" currently made by Utilities to the City. The repayment agreement in this Section 5 is independent of any other action taken by the City Council pursuant to City Charter § 6-40(b).

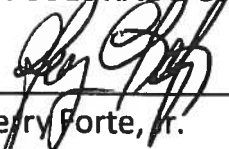
6. The parties agree that the repayment agreement in Section 5, above, is a fair and equitable manner in which to compensate Utilities for its payment of funds on behalf of the City as required by the IGA and that such procedure is consistent with the provisions of the City Code, the City Charter, and all provisions pursuant to which surplus payments are made to the City.
7. To the extent that there should be any future modification to the timing or nature of such surplus payments or a cessation thereof that would impact the ability of Utilities to utilize this means of achieving reimbursement, the City agrees to identify, in coordination and cooperation with Utilities, an alternate means to timely reimburse Utilities.
8. The provisions hereof shall continue to apply for so long as the operative provisions of the IGA are in effect, and may be amended by the City and Utilities in writing.

Dated the 28th day of June, 2016.

**FOR THE CITY OF COLORADO SPRINGS:**

By:   
Name: John W. Suthers  
Title: Mayor

**AND FOR COLORADO SPRINGS UTILITIES:**

By:   
Name: Jerry Forte, Jr.  
Title: Chief Executive Officer