

STATE OF COLORADO INTERGOVERNMENTAL AGREEMENT

Signature and Cover Page

State Agency Department of Transportation		Agreement Routing Number 25-HA2-XC-00048	
Local Agency City of Colorado Springs		Agreement Effective Date Date of Chief Engineer's signature (noted herein)	
Agreement Description Spring Creek Tributary Storm Sewer		Agreement Expiration Date End of the Useful Life of the Improvements	
Project # N/A	Region # 2	Contract Writer CM	Agreement Maximum Amount \$0.00

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

Each person signing this Agreement represents and warrants that he or she is duly authorized to execute this Agreement and to bind the Party authorizing his or her signature.

<p style="text-align: center;">LOCAL AGENCY City of Colorado Springs</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">By: (Print Name and Title)</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;">STATE OF COLORADO Jared S. Polis, Governor Department of Transportation Shoshana M. Lew, Executive Director</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Keith Stefanik, P.E., Chief Engineer</p> <p style="text-align: center;">Date: _____</p>
<p style="text-align: center;">2nd State or Local Agency Signature (if Needed) City of Colorado Springs</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Signature</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">By: (Print Name and Title)</p> <p style="text-align: center;">Date: _____</p>	<p style="text-align: center;">LEGAL REVIEW Philip J. Weiser, Attorney General</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">Assistant Attorney General</p> <p style="text-align: center;">_____</p> <p style="text-align: center;">By: (Print Name and Title)</p> <p style="text-align: center;">Date: _____</p>

In accordance with §24-30-202, C.R.S., this Agreement is not valid until signed and dated below
by the State Controller or an authorized delegate.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Department of Transportation

Effective Date: _____

AGREEMENT

This Agreement, is entered into by and between the State of Colorado for the use and benefit of the COLORADO DEPARTMENT OF TRANSPORTATION (the “State” or “CDOT”), and the CITY OF COLORADO SPRINGS, a home rule city and Colorado municipal corporation, (“Local Agency” or “City”). CDOT and the Local Agency individually shall be referred to as a “Party,” and together shall be referred to as the “Parties.” This Agreement shall not be valid or enforceable until the Effective Date as shown on the Signature and Cover Page of this Agreement.

RECITALS

CDOT has approved construction for a box culvert outfall with energy dissipation (“Facility”); and

The Parties recognize the importance and benefit to their respective systems by the Local Agencies’ operation and maintenance of a portion of the Facility; and

The Parties recognize that Facility maintenance and operations is specific to the kind of Facility constructed; and

The Parties desire to set forth their respective maintenance and operation obligations (the “Work”) on the Facility as shown in **Exhibit A** pursuant to §43-2-135, C.R.S; and

The Local Agency is adequately staffed and suitably equipped to undertake and satisfactorily carry out its operations and maintenance responsibilities under this Agreement; and

Required approval, clearance and coordination has been accomplished from and with appropriate agencies; and

This Agreement is executed by the State and Local Agency under authority of § 29-1-203 §43-1-106, 43-1-110, 43-1- 201, et seq., 43-2-102, and 43-2-144, C.R.S., as amended; and

The Local Agency agrees by its execution hereof that it is duly authorized to enter into this Agreement. Authorization may be evidenced by an appropriate ordinance/resolution or authority letter. A copy of any such ordinance/resolution or authority letter may be attached as **Exhibit B**. The provision by the Local Agency to CDOT of such ordinance/resolution or authority letter is at the Local Agency’s discretion; and

These recitals are hereby incorporated into the terms of this Agreement.

NOW, THEREFORE, it is hereby agreed that:

I. **Scope of Work**

The Work under this Agreement shall consist of the inspection, operations, maintenance, and repair responsibilities of the Facility as set forth and depicted in **Exhibit A**.

II. Exhibits

The Exhibits attached to this Agreement are:

Exhibit A- Scope of Work of the Facility

Exhibit B- Local Agency Resolution

Exhibit C- PII Certification

III. Order of Precedence

In the event of conflicts or inconsistencies between this Agreement and its exhibits, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

1. Special Provisions contained in Section IX of this Agreement
2. This Agreement
3. **Exhibit A-** Scope of Work of the Facility
4. **Exhibit B-** Local Agency Resolution
5. **Exhibit C-** PII Certification

IV. Term

This Agreement shall begin the date approved by all Parties and shall extend for the useful life of the improvements, unless earlier modified or terminated by written agreement of the Parties.

V. CDOT Commitments

- A. CDOT shall accept inspection, operation, maintenance, and repair responsibilities for the portions of the Work identified as CDOT's area of responsibility shown in **Exhibit A**.
- B. CDOT shall, at its own cost and expense, inspect, operate, maintain, repair, and make ample provision each year for said activities for those portions of the Work identified as CDOT's area of responsibility in **Exhibit A**.
- C. CDOT grants the Local Agency access to enter CDOT Right of Way ("ROW") to perform inspection and maintenance duties. Though a separate access permit will not be required, notification to CDOT of a Local Agency approved and CDOT accepted Method of Handling Traffic shall be required for any work impacting traffic.
- D. CDOT (and FHWA, if applicable) may make periodic inspections of the Facility to verify that they are being adequately operated, maintained, and repaired. If CDOT inspections indicate the Facility are not functioning as designed, CDOT may issue a written notice to the Local Agency to cure deficiencies. In the event the deficiencies are not remedied within the Facility timeline after written notice from CDOT to the Local Agency, CDOT may take whatever steps CDOT deems necessary to maintain the Facility. The Local Agency shall reimburse CDOT its actual and documented costs for such maintenance and repair work including labor, equipment, supplies, and materials. If CDOT repairs any deficiencies, it is under no obligation to maintain or repair in the future.

VI. Local Agency Commitments

- A. The Local Agency shall accept inspection, operation, maintenance, and repair responsibilities for the portions of the Work identified as the Local Agency's area of responsibility for the Work shown in **Exhibit A**.
- B. The Local Agency shall, at its own cost and expense, inspect, operate, maintain, repair, and make ample provision each year for those portions of the Work identified as the Local Agency's area of responsibility, as shown in **Exhibit A**.
- C. All Work by the Local Agency must be performed by a person experienced in the inspection, operation, and maintenance of the Facility. This is to ensure that the Facility are operating as designed. Any inspection form may be used if it is acceptable by agreement of the Parties.
- D. The Local Agency grants CDOT access to enter Local Agency ROW to perform CDOT's inspection, operation, maintenance, and repair duties of the Work.
- E. If after inspection of the Facility, CDOT may issue a written notice to cure deficiencies if the Local Agency fails to inspect, report, or properly maintain the Facility identified in **Exhibit A**. In the event the deficiencies are not remedied within the Facility timeline after written notice from CDOT to the Local Agency, CDOT may take whatever steps CDOT deems necessary to maintain the Facility. The Local Agency shall reimburse CDOT its actual and documented costs for such maintenance and repair work including labor, equipment, supplies, and materials. If CDOT repairs any deficiencies, it is under no obligation to maintain or repair in the future.

VII. Joint Commitments

- A. CDOT and the Local Agency will provide liaison through the representatives listed below. If the representatives or contact information changes the Party is to give written notice regarding the substitution of representatives or contact information to the other Party's Liaisons.

CDOT Facility Liaison

Jason Nelson, Region 2 Traffic Program Engineer
Region 2
5615 Wills Blvd. Suite A
Pueblo, CO 81008
Phone: 719-546-5411
Email: Jason.Nelson@state.co.us

Local Agency Facility Liaison

Erin Powers, Stormwater Enterprise Manager
City of Colorado Springs
30 S. Nevada Ave., Ste 410
Colorado Springs, CO 80903
Phone: 719-418-1336
Email: Erin.Powers@coloradosprings.gov

- B. If safety concerns are identified relating to the Facility, the Parties will partner with each other and any other affected local jurisdictions to identify the appropriate response to maintain safe and functional Facility.
- C. Prior to commencing any activities, the Parties shall coordinate with each other to minimize impacts to landscaping and/or enhancements that were installed by the Local Agency. CDOT will not be responsible for replacing any enhanced landscaping or irrigation installed by the Local Agency.
- D. The Parties agree they will not remove or alter the Facility in such a way that reduces the documented flow capacity or energy dissipation as originally constructed and documented in the drainage report.
- E. If this Agreement has terminated pursuant to Section IV and the Facility fail due to surpassing their useful life cycle, the Parties will be responsible for improvements that are not covered by maintenance responsibilities of the Local Agency pursuant to **Exhibit A**.
- F. Any fines levied against CDOT, or the Local Agency shall be the responsibility of the Party whose action or inaction is the cause of the fine, regardless of which Party the fine is levied against.
- G. The Parties shall make, keep, maintain, and allow inspection and monitoring by CDOT, of a complete file of all records, documents, communications, notes, and other written materials, electronic media files, and communications pertaining in any manner to the Work. The Parties shall maintain such records for the useful life of the Facility, following federal, State, and Local Agency record retention policies in either paper or electronic form.

VIII. General Provisions

A. Assignment

Local Agency's rights and obligations under this Agreement are personal and may not be transferred or assigned without the prior, written consent of the State. Any attempt at assignment or transfer without such consent shall be void. Any assignment or transfer of Local Agency's rights and obligations approved by the State shall be subject to the provisions of this Agreement.

B. Captions and References

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions. All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits, or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

C. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties related to the Work, and all prior representations and understandings related to the Work, oral or written, are merged into this Agreement.

D. Modification

The State may modify the terms and conditions of this Agreement by issuance of an updated Agreement, which shall be effective if Local Agency accepts Agreement Funds following receipt of the updated letter. The Parties may also agree to modification of the terms and conditions of the Agreement in a formal amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law and State Fiscal Rules.

E. Statutes, Regulations, Fiscal Rules, and Other Authority

Any reference in this Agreement to a statute, regulation, State Fiscal Rule, fiscal policy, or other authority shall be interpreted to refer to such authority then current, as may have been changed or amended since the Agreement Issuance Date. Local Agency shall strictly comply with all applicable Federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Digital Signatures

If any signatory signs this Agreement using a digital signature in accordance with the Colorado State Controller Contract, Agreement and Purchase Order Policies regarding the use of digital signatures issued under the State Fiscal Rules, then any agreement or consent to use digital signatures within the electronic system through which that signatory signed shall be incorporated into this Agreement by reference.

G. Severability

The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect, provided that the Parties can continue to perform their obligations under the Agreement in accordance with the intent of the Agreement.

H. Survival of Certain Agreement Terms

Any provision of this Agreement that imposes an obligation on a Party after termination or expiration of the Agreement shall survive the termination or expiration of the Agreement and shall be enforceable by the other Party.

I. Third Party Beneficiaries

Except for the Parties' respective successors and assigns described above, this Agreement does not and is not intended to confer any rights or remedies upon any person or entity other than the Parties. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

J. Waiver

A Party's failure or delay in exercising any right, power, or privilege under this Agreement, whether explicit or by lack of enforcement, shall not operate as a waiver, nor shall any single or partial exercise of any right, power, or privilege preclude any other or further exercise of such right, power, or privilege.

K. Appropriations

This Agreement is expressly made subject to the limitations of the Colorado Constitution and Section 7-60 of the Charter of the City of Colorado Springs. 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 Council of Colorado Springs, contrary to Article X, § 20, Colo. Const., or any other constitutional, statutory, or charter debt limitation. Notwithstanding any other provision of this Agreement, with respect to any financial obligation of the City which may arise under this Agreement in any fiscal year after the year of execution, in the event the budget or other means of appropriation for any such year fails to provide funds in sufficient amounts to discharge such obligation, such failure (i) shall act to terminate this Agreement at such time as the then-existing and available appropriations are depleted, and (ii) neither such failure nor termination shall constitute a default or breach of this Agreement, including any sub-agreement, attachment, schedule, or exhibit thereto, by the City. As used herein, the term "appropriation" shall mean and include the due adoption of an appropriation ordinance and budget and the approval of a Budget Detail Report (Resource Allocations) which contains an allocation of sufficient funds for the performance of fiscal obligations arising under this Agreement.

L. Governmental Immunity

Nothing in this Agreement shall be interpreted to limit or prevent the protections afforded to the City under the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq.

M. Accessibility

- i. Local Agency shall comply with and the work provided under this Agreement shall be in compliance with all applicable provisions of §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability*, as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S. Local Agency shall also comply with all State of Colorado technology standards related to technology accessibility and with Level AA of the most current version of the Web Content Accessibility Guidelines (WCAG), incorporated in the State of Colorado technology standards.
- ii. The State may require Local Agency's compliance to the State's Accessibility Standards to be determined by a third party selected by the State to attest to Local Agency's work and software is in compliance with §§24-85-101, et seq., C.R.S., and the *Accessibility Standards for Individuals with a Disability* as established by OIT pursuant to Section §24-85-103 (2.5), C.R.S.

IX. COLORADO SPECIAL PROVISIONS (COLORADO FISCAL RULE 3-3)

These Special Provisions apply to all contracts (agreements). Contractor refers to Local Agency and Contract refers to Agreement.

A. Statutory Approval §24-30-202(1), C.R.S.

This Contract shall not be valid until it has been approved by the Colorado State Controller or designee. If this Contract is for a Major Information Technology Project, as defined in §24-37.5-102(19), then this Contract shall not be valid until it has been approved by the State's Chief Information Officer or designee.

B. Fund Availability §24-30-202(5.5), C.R.S., applicable Local Agency law, rule or regulation.

Financial obligations of the Parties payable after the current State Fiscal Year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available.

C. Governmental Immunity

Liability for claims for injuries to persons or property arising from the negligence of the Parties, its departments, boards, commissions committees, bureaus, offices, employees and officials shall be controlled and limited by the provisions of the Colorado Governmental Immunity Act, §24-10-101, *et seq.*, C.R.S.; the Federal Tort Claims Act, 28 U.S.C. Pt. VI, Ch. 171 and 28 U.S.C. 1346(b), and the State's risk management statutes, §§24-30-1501, *et seq.* C.R.S. No term or condition of this Contract shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, contained in these statutes.

D. Independent Contractor

Contractor shall perform its duties hereunder as an independent contractor and not as an employee. Neither Contractor nor any agent or employee of Contractor shall be deemed to be an agent or employee of the State. Contractor shall not have authorization, express or implied, to bind the State to any agreement, liability or understanding, except as expressly set forth herein. **Contractor and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for Contractor or any of its agents or employees. Contractor shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Contract. Contractor shall (i) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (ii) provide proof thereof when requested by the State, and (iii) be solely responsible for its acts and those of its employees and agents.**

E. Compliance with Law

Contractor shall comply with all applicable federal and State laws, rules, and regulations in effect or hereafter established, including, without limitation, laws applicable to discrimination and unfair employment practices.

F. Choice of Law, Jurisdiction, and Venue

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Contract. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. All suits or actions related to this Contract shall be filed and proceedings held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

G. Prohibited Terms

Any term included in this Contract that requires the State to indemnify or hold Contractor harmless; requires the State to agree to binding arbitration; limits Contractor's liability for damages resulting from death, bodily injury, or damage to tangible property; or that conflicts with this provision in any way shall be void ab initio. Nothing in this Contract shall be construed as a waiver of any provision of §24-106-109 C.R.S. Any term included in this Contract that limits Contractor's liability that is not void under this section shall apply only in excess of any insurance to be maintained under this Contract, and no insurance policy shall be interpreted as being subject to any limitations of liability of this Contract.

H. Software Piracy Prohibition

State or other public funds payable under this Contract shall not be used for the acquisition, operation, or maintenance of computer software in violation of federal copyright laws or applicable licensing restrictions. Contractor hereby certifies and warrants that, during the term of this Contract and any extensions, Contractor has and shall maintain in place appropriate systems and controls to prevent such improper use of public funds. If the State determines that Contractor is in violation of this provision, the State may exercise any remedy available at law or in equity or under this Contract, including, without limitation, immediate termination of this Contract and any remedy consistent with federal copyright laws or applicable licensing restrictions.

I. Employee Financial Interest/Conflict of Interest §§24-18-201 and 24-50-507, C.R.S.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Contract. Contractor has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of Contractor's services and Contractor shall not employ any person having such known interests.

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Exhibit A: Scope of Work of Facilities

Spring Creek Tributary Storm Sewer Intergovernmental Maintenance and Operations Agreement (IGA) Between Colorado Department of Transportation and City of Colorado Springs

SCOPE OF WORK

The “Work” under this Maintenance and Operations Intergovernmental Agreement (IGA) consists of maintenance responsibilities between the Colorado Department of Transportation (CDOT) and the City of Colorado Springs for storm sewer infrastructure constructed on the Highway 24 right-of-way, south of the Project Site (Lot 2, Block 1, Prospect Park Subdivision 5). Refer to the accompanying exhibit for specific delineations of each party’s responsibilities.

The City of Colorado Springs shall be responsible for:

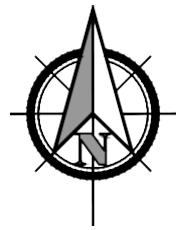
Maintenance (including ensuring an unclogged condition) and repairs of all proposed storm sewer infrastructure within the CDOT Right of Way, including the following items:

- The proposed 72” RCP storm sewer and one storm box base manhole within the CDOT Right of Way
- The Type VI impact basin and associated wingwalls and railing
- The 10’ maintenance trail and concrete steps alongside of impact basin
- MSE Block retaining wall along a portion of the stairs and east of the impact basin.
- Repair to CDOT ROW for any erosion created by failure of drainage infrastructure not capturing flows previously conveyed through the Spring Creek open channel.
- Responsible for landscape establishment for all disturbances within CDOT ROW pending CDOT acceptance of the revegetation level stating the stormwater permit may not be terminated without CDOT prior consent.

CDOT shall be responsible for:

Maintenance of the following items:

- The existing drainage channel between the end of the new riprap channel and existing 8’x6’ box culvert with wingwalls
- Existing 8’x6’ box culvert with wingwalls
- The grass and landscaping within the CDOT ROW



SCALE: NTS

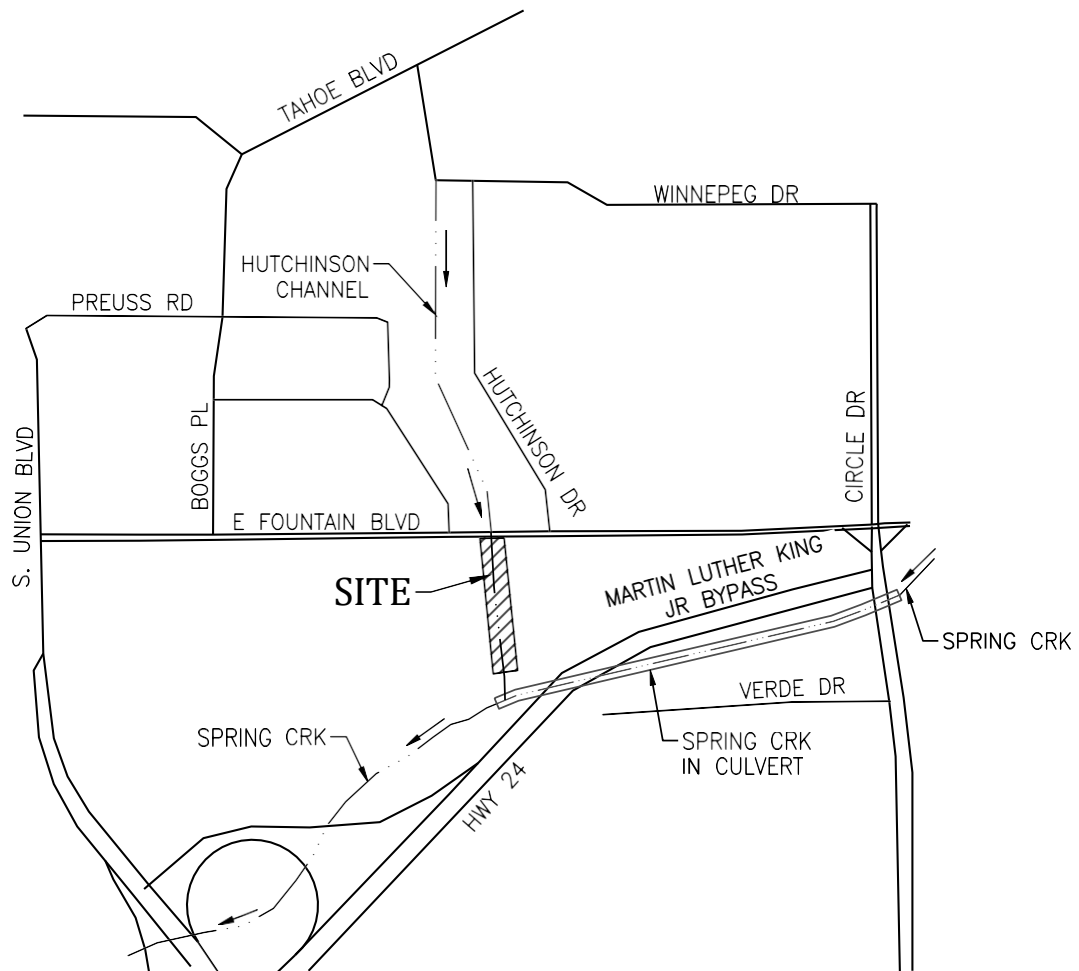




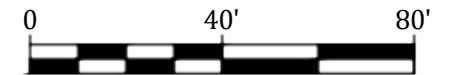
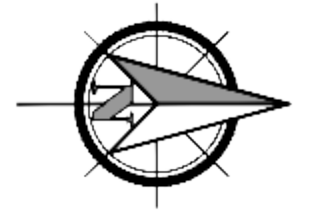


FIGURE 1
VICINITY MAP
SPRING CREEK TRIBUTARY STORM SEWER

LEGEND

- EXISTING OR PROPOSED PROPERTY LINE
- EXISTING EASEMENT OR TRACT
- PROPOSED EASEMENT
-  PROPOSED STORM DRAINAGE GRATED INLET
-  PROPOSED STORM SEWER PIPE AND MANHOLE
-  APPROXIMATE PROJECT LIMITS / LIMITS OF DISTURBANCE WITHIN COLORADO DEPARTMENT OF TRANSPORTATION RIGHT OF WAY
-  CITY OF COLORADO SPRINGS MAINTAINED INFRASTRUCTURE WITHIN COLORADO DEPARTMENT OF TRANSPORTATION RIGHT OF WAY



SCALE: 1"=40'

PROSPECT PARK SUBDIVISION NO. 7

APN: 6421306005
LANDS N/T
ROMBOCUS, COSTOS

CS STD. D-20A
TYPE I BOX BASE MH

EX. 7' STM ESMT
(PUBLIC) REC #97950

CS STD. D-20A
TYPE I BOX BASE MH

EX. 60' RCP

EX. 7' CURB INLET

EAST FOUNTAIN BOULEVARD
(100' PUBLIC RIGHT-OF-WAY)

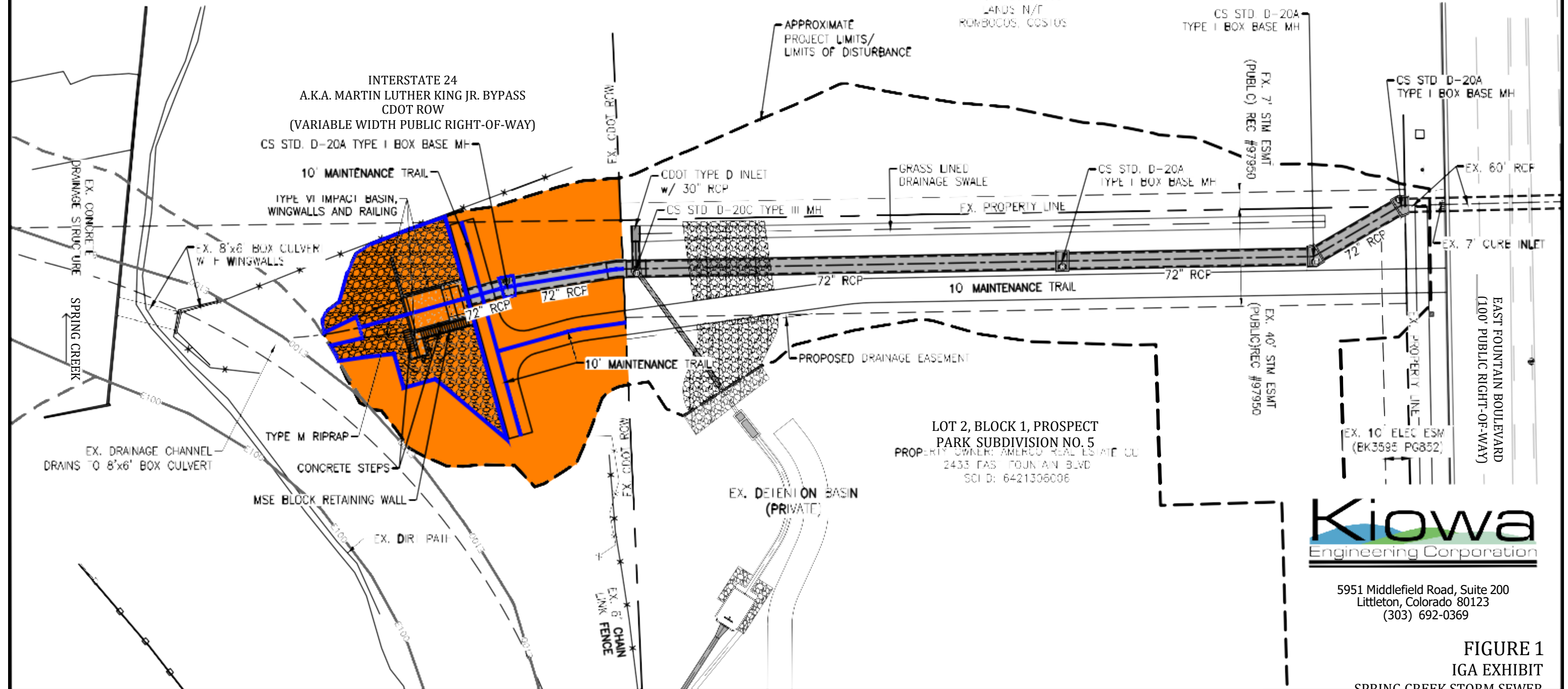
EX. 10' ELEC ESM
(BK3595 PG852)

Kiowa
Engineering Corporation

5951 Middlefield Road, Suite 200
Littleton, Colorado 80123
(303) 692-0369

FIGURE 1 IGA EXHIBIT

SPRING CREEK STORM SEWER



**Exhibit B:
Local Agency Resolution
(If applicable)**

EXHIBIT C

PII Certification

STATE OF COLORADO

LOCAL AGENCY CERTIFICATION FOR ACCESS TO PII THROUGH A DATABASE OR AUTOMATED NETWORK

Pursuant to § 24-74-105, C.R.S., I, _____, on behalf of _____ (legal name of Local Agency) (the “Local Agency”), hereby certify under the penalty of perjury that the Local Agency has not and will not use or disclose any Personal Identifying Information, as defined by § 24-74-102(1), C.R.S., for the purpose of investigating for, participating in, cooperating with, or assisting Federal Immigration Enforcement, including the enforcement of civil immigration laws, and the Illegal Immigration and Immigrant Responsibility Act, which is codified at 8 U.S.C. §§ 1325 and 1326, unless required to do so to comply with Federal or State law, or to comply with a court-issued subpoena, warrant or order.

I hereby represent and certify that I have full legal authority to execute this certification on behalf of the Local Agency.

Signature: _____

Printed Name: _____

Title: _____

Date: _____