

AGENDA

CITY COUNCIL MEETING CITY OF WHEAT RIDGE, COLORADO 7500 WEST 29TH AVENUE, MUNICIPAL BUILDING

September 9, 2019

7:00 p.m.

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer, at 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

CALL TO ORDER

PLEDGE OF ALLEGIANCE

ROLL CALL OF MEMBERS

PROCLAMATIONS AND CEREMONIES

APPROVAL OF MINUTES

APPROVAL OF AGENDA

CITIZENS' RIGHT TO SPEAK

- a. Citizens, who wish, may speak on any matter not on the Agenda for a maximum of 3 minutes and sign the PUBLIC COMMENT ROSTER.
- b. Citizens who wish to speak on an Agenda Item, please sign the GENERAL AGENDA ROSTER.
- c. Citizens who wish to speak on a Public Hearing item, please sign the PUBLIC HEARING ROSTER before the item is called to be heard.
- d. Citizens who wish to speak on Study Session Agenda Items for a maximum of 3 minutes and sign the STUDY SESSION AGENDA ROSTER.

1. CONSENT AGENDA

- a. Motion to cancel the Study Session of the Wheat Ridge City Council on November 4, 2019, due to the Municipal Election
- b. Resolution No. 48-2019 – a resolution concerning the acquisition and acceptance of private property for the purpose of constructing, installing, maintaining, and using public improvements for improving the

intersections of W 52nd Avenue/Ward Road and Ridge Road/Ward Road and the pedestrian bridge, associated plaza areas, and the multi-use trail by negotiation and voluntary purchase and authorizing such action as necessary to accomplish said purposes

- c. Resolution No. 49-2019 – a resolution approving an intergovernmental agreement with the City of Mountain View regarding Stormwater Drainage Improvements
- d. Resolution No. 50-2019 – a resolution approving the memorandum of understanding between the West Metro Fire Protection District and the City of Wheat Ridge concerning DUI blood draw services

PUBLIC HEARINGS AND ORDINANCES ON SECOND READING

- 2. Council Bill No. 13-2019 – an ordinance amending the Wheat Ridge Code of Laws concerning procedures for protests under Section 5.10 of the Home Rule Charter (Case No. ZOA-19-03)
- 3. Resolution No. 51-2019 – a resolution approving a two-lot subdivision with variances for lot width and lot size for property zoned Residential-Three (R-3) located at 2810 and 2816 Benton Street (Case No. WS-19-05 / Horton Subdivision)

ORDINANCES ON FIRST READING

- 4. Council Bill No. 15-2019 – an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area

DECISIONS, RESOLUTIONS AND MOTIONS

- 5. Motion to award a contract and approve subsequent payment of \$83,000 to KC Construction Inc., of Castle Rock, CO, for the Wheat Ridge Police Evidence Building improvements and approve a 10% contingency in the amount of \$8,300
- 6. Resolution No. 52-2019 – a resolution approving the acceptance of Justice Assistance Grant funds in the amount of \$10,440 to be combined with budgeted funds to upgrade three security cameras covering the Police Department parking lot

CITY MANAGER'S MATTERS

CITY ATTORNEY'S MATTERS

ELECTED OFFICIALS' MATTERS


ADJOURN TO SPECIAL STUDY SESSION

REQUEST FOR CITY COUNCIL ACTION**TITLE: MOTION TO CANCEL THE STUDY SESSION OF THE
WHEAT RIDGE CITY COUNCIL ON NOVEMBER 4, 2019,
DUE TO THE MUNICIPAL ELECTION**

- ☐ PUBLIC HEARING
☒ BIDS/MOTIONS
☐ RESOLUTIONS

- ☐ ORDINANCES FOR 1ST READING
☐ ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: ☐ YES ☒ NO



City Manager

ISSUE:

The Wheat Ridge Municipal Election is on November 5, 2019. The City Council typically cancels the study session scheduled the evening before an election.

FINANCIAL IMPACT:

None

RECOMMENDATIONS:

Staff recommends the cancellation of the November 4, 2019 study session.

RECOMMENDED MOTION:

"I move to cancel the study session of the City Council scheduled for November 4, 2019 due to the Municipal Election."

REPORT PREPARED/REVIEWED BY:

Patrick Goff, City Manager

REQUEST FOR CITY COUNCIL ACTION

TITLE: RESOLUTION NO. 48-2019 - A RESOLUTION CONCERNING THE ACQUISITION AND ACCEPTANCE OF PRIVATE PROPERTY FOR THE PURPOSE OF CONSTRUCTING, INSTALLING, MAINTAINING, AND USING PUBLIC IMPROVEMENTS FOR IMPROVING THE INTERSECTIONS OF W 52ND AVENUE/WARD ROAD AND RIDGE ROAD/WARD ROAD AND THE PEDESTRIAN BRIDGE, ASSOCIATED PLAZA AREAS, AND THE MULTI-USE TRAIL BY NEGOTIATION AND VOLUNTARY PURCHASE AND AUTHORIZING SUCH ACTION AS NECESSARY TO ACCOMPLISH SAID PURPOSES

☐ PUBLIC HEARING
☐ BIDS/MOTIONS
☒ RESOLUTIONS

☐ ORDINANCES FOR 1ST READING
☐ ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: ☐ YES ☒ NO



Engineering Manager



City Manager

ISSUE:

The Wheat Ridge · Ward Station planning area is one of four projects in the City's *Investing 4 the Future* bond program which is benefitting from \$12 million from the voter-approved, temporary ½-cent sales and use tax rate increase. Three pending projects require right-of-way to be purchased, including two intersection improvements and the pedestrian bridge and multi-use trail.

In order for staff and HDR, the City's right-of-way consultant, to proceed with the acquisitions, Council must approve a resolution authorizing the acquisition and acceptance of the necessary property for the three projects.

PRIOR ACTION:

For several years, the City has led extensive visioning and planning efforts focused on the Wheat Ridge · Ward Station planning area. Numerous Council updates and actions have occurred at various stages in these processes. Council was most recently updated on April 1, 2019 on the status of the Wheat Ridge · Ward Station planning area and on private developments in the area. At a study session on August 19, Council was informed on the right-of-way acquisition process. At Council's direction, this resolution does not authorize use of eminent domain.

FINANCIAL IMPACT:

Acquisition costs totaling \$711,480 are budgeted for three pending projects and are available in the Wheat Ridge · Ward Road Station 2E Bond Fund. The estimated acquisition costs for each project are as follows:

- 52nd Avenue/Ward Road Intersection - \$5,280
- Ridge Road/Ward Road Intersection - \$5,280
- Pedestrian Bridge, Plazas, and Multi-use Trail - \$700,920

The above includes an estimated cost of \$528,000 for the Multi-use Trail from the south plaza to the I-70 Frontage Road North. Subsequent to the 2019 budget adoption, staff determined that it may be appropriate to obtain the property necessary for the Multi-use Trail through a permanent easement instead of purchasing ROW.

The City has an Intergovernmental Agreement the City of Arvada that establishes a cost sharing arrangement for 52nd Avenue, including the intersection with Ward Road.

BACKGROUND:

52nd Avenue/Ward Road Intersection

Earlier this year, CDOT and City staff met to discuss the necessary improvements to the 52nd Avenue and Ward Road intersection. The plans at that time only showed improvements to the east side of the intersection. CDOT expressed a desire to upgrade the entire traffic signal from the existing span wire signal to a modern pole/mast arm signal.

At a subsequent meeting with CDOT, both agencies agree to share the cost of the intersection upgrade equally. An Intergovernmental Agreement has been started with CDOT and will be brought to Council later this fall for approval.

On June 24, 2019, Council authorized SEH to prepare the construction drawings, coordinate the proposed traffic signal upgrade with the affected utility companies and other agencies, and obtain the necessary approvals to construct the project. SEH has discovered that some of the existing traffic signal equipment and other improvements are outside of the existing ROW at the northeast corner of the intersection. In addition, temporary easements are needed at the other three corners to reconstruct the intersection.

Ridge Road/Ward Road Intersection

In April 2018, CDOT notified the City a new access permit would be required for the Ridge Road/Ward Road intersection. Ridge Road is now a through street connecting Ward Road to the Wheat Ridge · Ward Station and to the street network to the east. Previously, Ridge Road was called W. 50th Avenue and was a dead end street for just a few businesses. The extent of the change triggered CDOT's access permit requirement.

AECOM prepared a new access permit and that was submitted in August 2018. We received an approved access permit from CDOT in October 2018 with the following conditions:

- Construct a deceleration lane along Ward Road approaching Ridge Road from the south.
- Limit the intersection to a ¾ movement allowing a right-in, a right-out, and a left-in, but no left-out.

AECOM recently completed preliminary (60%) plans for the intersection. With the addition of an island that limits the left-out movement and based on the need to accommodate buses turning off of Ward Road, a small triangle of additional ROW is necessary at the southeast corner of the intersection. In addition, temporary construction easements are necessary from the two properties along Ward Road south of Ridge Road along the required deceleration lane.

Once the intersection plans are approved by CDOT and the ROW is obtained, CDOT will issue a Notice to Proceed (NTP) for the improvements to be completed.

Pedestrian Bridge, Plaza Areas, and Multi-use Trail

Earlier this year, AECOM completed conceptual (15%) designs for the bridge, south plaza, and linear park, which were reviewed with Council at the April 1 Study Session. Council directed staff to proceed with the design and property acquisition for the pedestrian bridge, plaza areas, and multi-use trail. The north plaza is on RTD property and was accommodated in the design of the station.

For both the north end of the pedestrian bridge and north plaza, a permanent easement is necessary from RTD because both of those improvements will be located on RTD property at the station.

For both the south end of the pedestrian bridge and south plaza, property acquisition is necessary. The acquisition will include vacation of a portion of the ROW for the existing cul-de-sac. The cul-de-sac will be moved to the west to better accommodate dropping off G-Line passengers that can then use the pedestrian bridge to access the station.

For the multi-use trail, staff is planning to obtain permanent easements instead of ROW for the pedestrian facilities and plantings that are proposed on the slope. The City would then be responsible for the maintenance of the slope. While ROW is preferred for street improvements, easements are often used for a trail or improvements on private property.

In order for staff and the consultant to proceed with the acquisitions that are necessary for the three projects, City Council needs to approve a resolution authorizing the acquisition of ROW on Council's behalf. The resolution also authorizes the Mayor and City Clerk to accept the ROW on behalf of the Council.

RECOMMENDATIONS:

Staff recommends that City Council approve the attached resolution authorizing acquisition and acceptance of certain properties for the purposes of improving the intersections of 52nd Avenue/Ward Road and Ridge Road/Ward Road and the pedestrian bridge, associated plaza areas, and the multi-use trail.

RECOMMENDED MOTION:

"I move to approve Resolution No. 48-2019 a resolution concerning the acquisition and acceptance of private property for the purpose of constructing, installing, maintaining, and using public improvements for improving the intersections of W 52nd Avenue/Ward Road and Ridge Road/Ward Road and the pedestrian bridge, associated plaza areas, and the multi-use trail by negotiation and voluntary purchase and authorizing such action as necessary to accomplish said purposes."

Or,

"I move to postpone indefinitely Resolution No. 48-2019, a resolution concerning the acquisition and acceptance of private property for the purpose of constructing, installing, maintaining, and using public improvements for improving the intersections of W 52nd Avenue/Ward Road and Ridge Road/Ward Road and the pedestrian bridge, associated plaza areas, and the multi-use trail by negotiation and voluntary purchase and authorizing such action as necessary to accomplish said purposes, for the following reason(s) _____."

REPORT PREPARED/REVIEWED BY:

Mark Westberg, Project Manager

Lauren Mikulak, Planning Manager

Steve Nguyen, Engineering Manager

Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution 48-2019
2. Exhibit A – 52nd/Ward Conceptual Plans
3. Exhibit B – Ridge/Ward Conceptual Plans
4. Exhibit C – Pedestrian Bridge/Plazas/Multi-use Trail Conceptual Plans

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 48
Series of 2019

TITLE: A RESOLUTION CONCERNING THE ACQUISITION AND ACCEPTANCE OF PRIVATE PROPERTY FOR THE PURPOSE OF CONSTRUCTING, INSTALLING, MAINTAINING, AND USING PUBLIC IMPROVEMENTS FOR IMPROVING THE INTERSECTIONS OF W 52ND AVENUE/WARD ROAD AND RIDGE ROAD/WARD ROAD AND THE PEDESTRIAN BRIDGE, ASSOCIATED PLAZA AREAS, AND THE MULTI-USE TRAIL BY NEGOTIATION AND VOLUNTARY PURCHASE AND AUTHORIZING SUCH ACTION AS NECESSARY TO ACCOMPLISH SAID PURPOSES

WHEREAS, the City Council for the City of Wheat Ridge seeks to acquire certain property rights more particularly described on the attached **Exhibit A** for the purposes of constructing, installing, maintaining and using public improvements for improving the intersection of W 52nd Avenue and Ward Road in Wheat Ridge, Colorado; and

WHEREAS, the City Council for the City of Wheat Ridge seeks to acquire certain property rights more particularly described on the attached **Exhibit B** for the purposes of constructing, installing, maintaining and using public improvements for improving the intersection of Ridge Road and Ward Road in Wheat Ridge, Colorado; and

WHEREAS, the City Council for the City of Wheat Ridge seeks to acquire certain property rights more particularly described on the attached **Exhibit C** for the purposes of constructing, installing, maintaining and using public improvements for constructing a pedestrian bridge over the G Line including plazas on either side of the bridge and a multi-use trail from the south plaza to the I-70 Frontage Road North in Wheat Ridge, Colorado; and

WHEREAS, the City of Wheat Ridge has complied and intends to continue to comply with all applicable provisions of C.R.S. § 38-1-101, *et seq.*, including, but not limited to, the notice and good faith negotiation requirements and provisions thereof.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge that:

Section 1. The term "Subject Property" means the interest in the real property more particularly described in attached **Exhibits A, B, and C**.

Section 2. The City Council hereby finds that the acquisition of the Subject Property for the construction, installation, maintenance and use of the public improvements for improving the intersection of W 52nd Avenue and Ward Road will serve a proper, public and municipal purpose and use, and that such

acquisition is necessary and essential to this public purpose and use. The City Council hereby declares its intent to acquire the Subject Property for the purposes stated herein.

Section 3. The City Manager or his designee, in consultation with the City Attorney, is directed to provide notice of the City's intent to acquire the Subject Property to the various owners of said property, and to thereafter conduct good faith negotiations with the owners for the acquisition of the property rights sought. The City Manager is authorized to make offers for all or portions of the Subject Property based upon the appraisal or fair market valuation of the same, and is further authorized to execute agreements for the acquisition of all or portions of the Subject Property as described on the attached **Exhibit A:** 52nd Avenue and Ward Road Reconstruction plans.

Section 4. The City Council hereby finds that the acquisition of the Subject Property for the construction, installation, maintenance and use of the public improvements for improving the intersection of Ridge Road and Ward Road will serve a proper, public and municipal purpose and use, and that such acquisition is necessary and essential to this public purpose and use. The City Council hereby declares its intent to acquire the Subject Property for the purposes stated herein.

Section 5. The City Manager or his designee, in consultation with the City Attorney, is directed to provide notice of the City's intent to acquire the Subject Property to the various owners of said property, and to thereafter conduct good faith negotiations with the owners for the acquisition of the property rights sought. The City Manager is authorized to make offers for all or portions of the Subject Property based upon the appraisal or fair market valuation of the same, and is further authorized to execute agreements for the acquisition of all or portions of the Subject Property as described on the attached **Exhibit B:** Ridge Road and Ward Road Reconstruction plans.

Section 6. The City Council hereby finds that the acquisition of the Subject Property for the construction, installation, maintenance and use of the public improvements for constructing a pedestrian bridge over the G Line including plazas on either side of the bridge and a multi-use trail from the south plaza to the I-70 Frontage Road North will serve a proper, public and municipal purpose and use, and that such acquisition is necessary and essential to this public purpose and use. The City Council hereby declares its intent to acquire the Subject Property for the purposes stated herein.

Section 7. The City Manager or his designee, in consultation with the City Attorney, is directed to provide notice of the City's intent to acquire the Subject Property to the various owners of said property, and to thereafter conduct good faith negotiations with the owners for the acquisition of the property rights sought. The City Manager is authorized to make offers for all or portions of the Subject Property based upon the appraisal or fair market valuation of the same, and is further authorized to execute agreements for the acquisition of all or portions of

the Subject Property as described on the attached **Exhibit C** Pedestrian Bridge, Plazas, and a Multi-use Trail construction plans.

Section 8. The City Manager or his designee, in consultation with the City Attorney, are hereby specifically authorized to make such reasonable or necessary amendments and corrections to the terms and/or legal descriptions of the Subject Property to be acquired, including authorization to include such additional or other property rights necessary or desirable for the City to acquire so as to construct, install, maintain and use the public improvements. The Mayor and City Clerk are hereby authorized and directed to execute an acceptance of the interests in real property when acquired.

Section 9. The City Council hereby finds, determines and declares that this Resolution is promulgated under the general police power of the City of Wheat Ridge, that it is adopted for the health, safety and welfare of the public, and that this Resolution is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further determines that the Resolution bears a rational relation to the proper legislative object sought to be obtained.

Section 10. If any clause, sentence, paragraph or part of this Resolution or the application thereof to any person or circumstances shall for any reason be adjudged by a court of competent jurisdiction invalid, such judgment shall not affect application to other persons or circumstances.

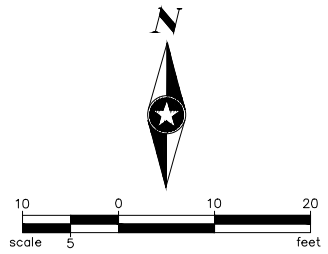
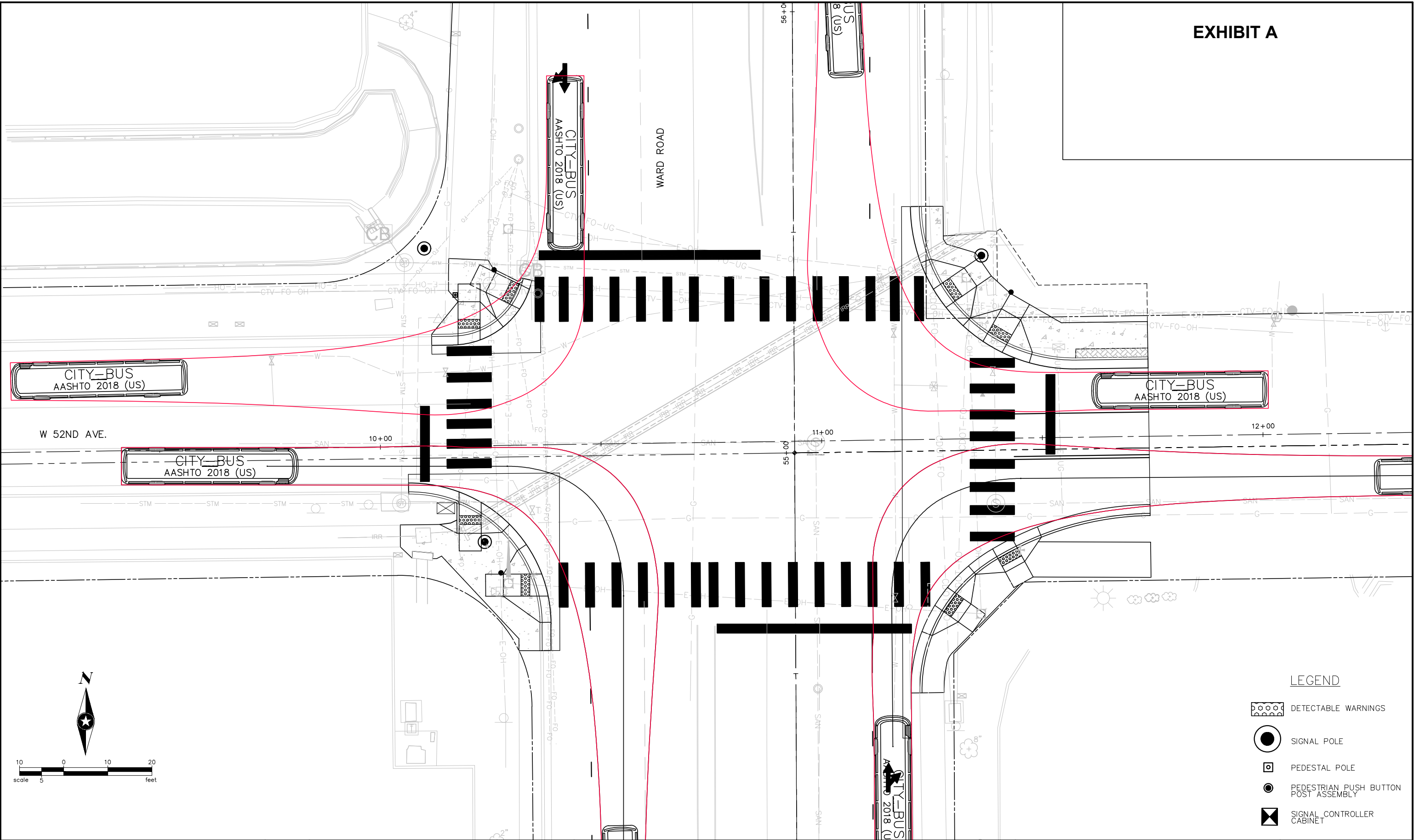
Section 11. This Resolution shall become effective immediately upon adoption.

DONE AND RESOLVED this 9th day of September 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk



- LEGEND
- DETECTABLE WARNINGS
 - SIGNAL POLE
 - PEDESTAL POLE
 - PEDESTRIAN PUSH BUTTON POST ASSEMBLY
 - SIGNAL CONTROLLER CABINET

Print Date: 8/21/19	
File Name: 151718_INTERSECTIONPLAN EXHIBIT.DWG	
Horiz. Scale: As Noted	Vert. Scale: As Noted
Unit Information	Unit Leader Initials
Short Elliott Hendrickson Inc. Colorado Center Tower One Suite 6000 2000 South Colorado Boulevard Denver, CO 80222-7900 Tele. (720) 540-6800 (800) 490-4966 Fax (720) 540-6801	

Sheet Revisions		
Date:	Comments	Init.

City of Wheat Ridge
DEPARTMENT OF PUBLIC WORKS

7500 WEST 29TH AVENUE
WHEAT RIDGE, COLORADO 80033

TELEPHONE: (303) 235-2861
FAX: (303) 235-2857

As Constructed
No Revisions:
Revised:
Void:

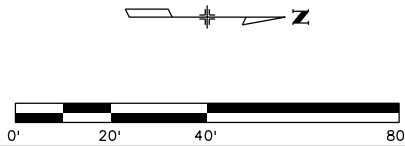
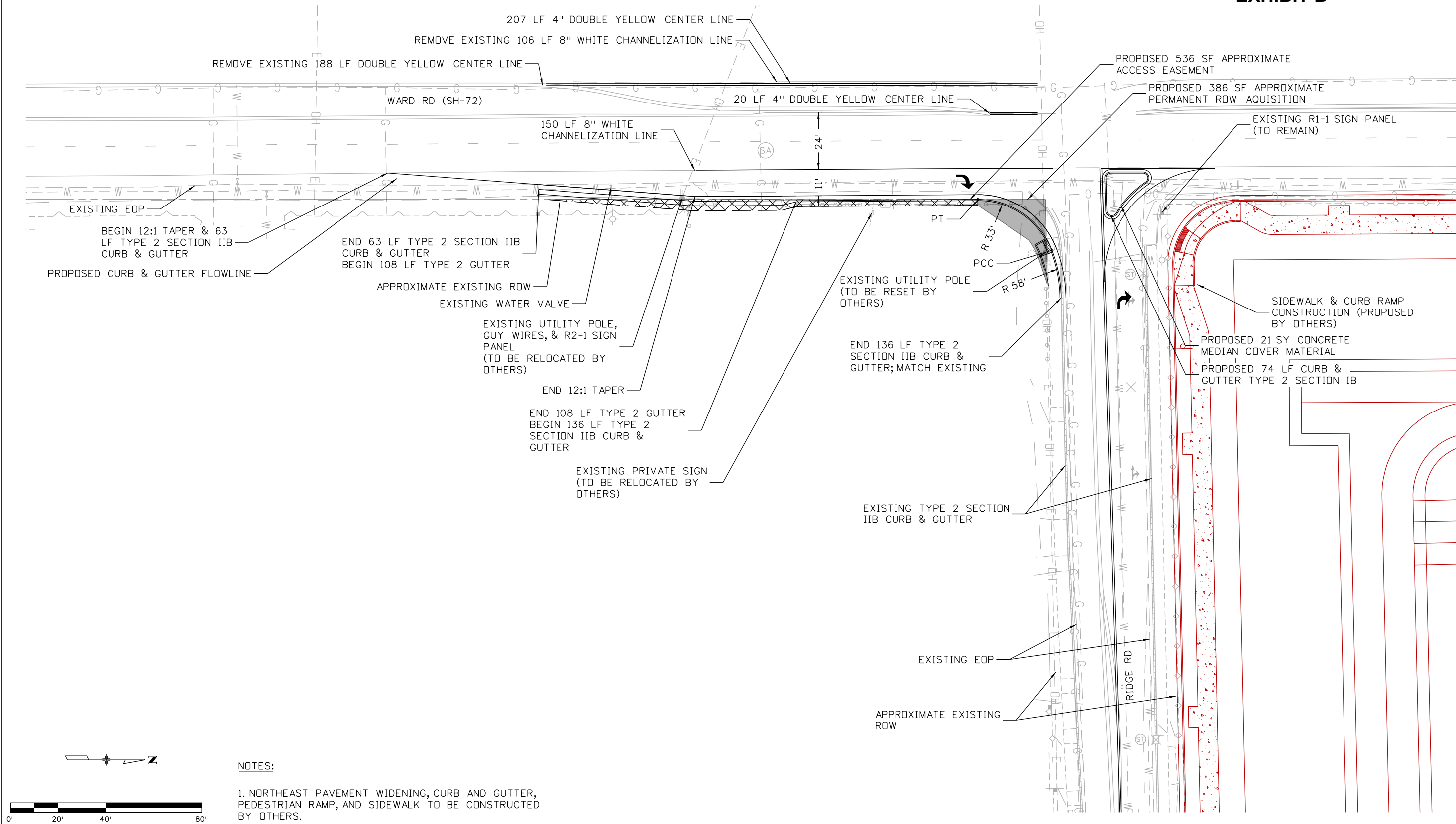
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Designer:	KJK	Structure Numbers	
Detailer:	KAC		
Sheet Subset:	INT	Subset Sheets:	1 of 1

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SEH PROJECT NO. 151718
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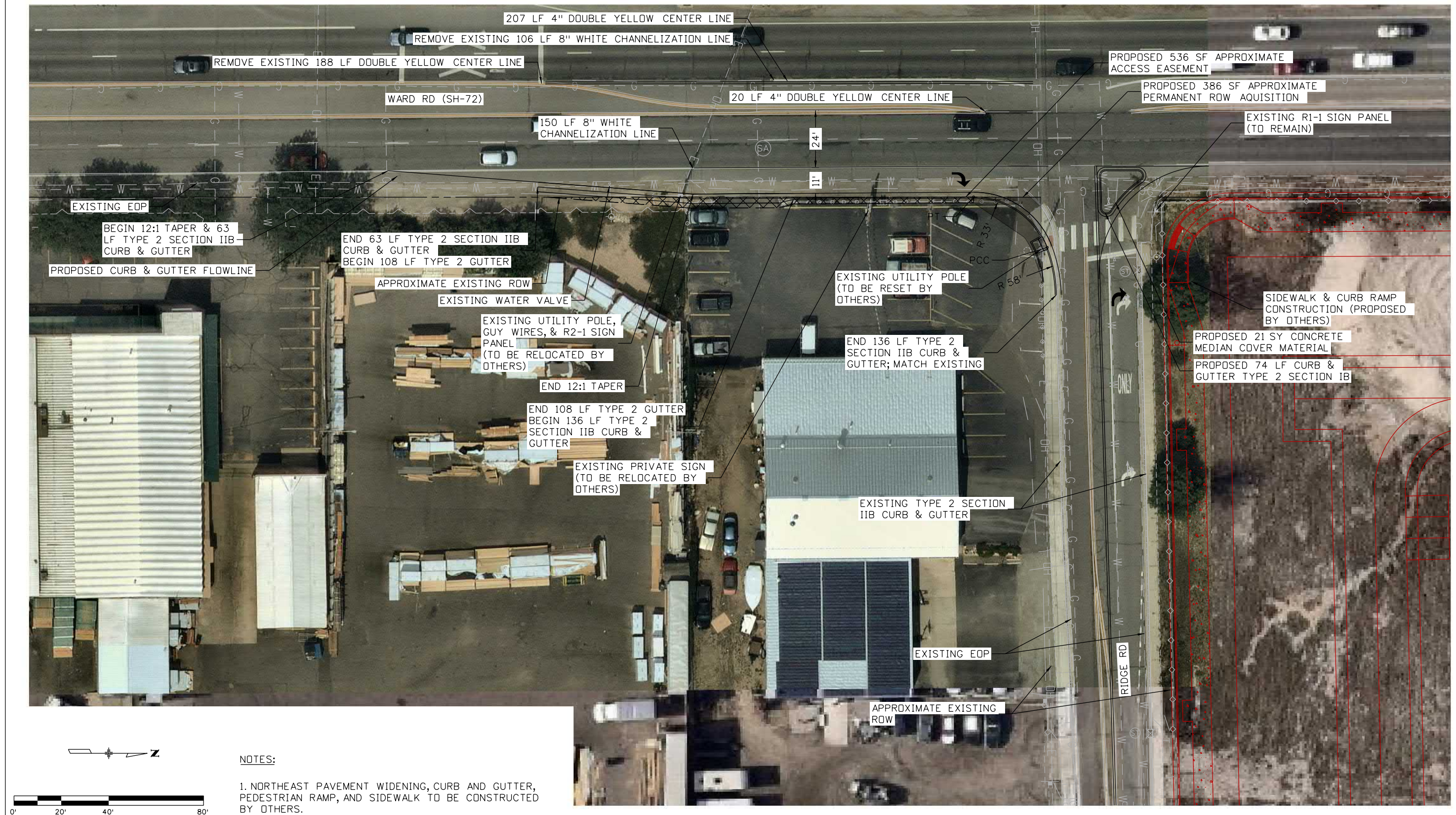
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EXHIBIT B



NOTES:
1. NORTHEAST PAVEMENT WIDENING, CURB AND GUTTER, PEDESTRIAN RAMP, AND SIDEWALK TO BE CONSTRUCTED BY OTHERS.

<div>0000</div>	Sheet Revisions			Print Date: 8/14/2019		<div>AECOMImagine it, Delivered.</div>	Project No./Code	WARD RD & RIDGE RD		Sheet #
	Date:	Comments	Init.	File Name: Ward Rd_W 50th Ave_Exhibit.dgn				PLAN VIEW		
				Horiz. Scale: 1:40 Vert. Scale: As Noted				Designer: M. KRELL		
				Unit Information Unit Leader Initials				Detailer: A. LAVERY		

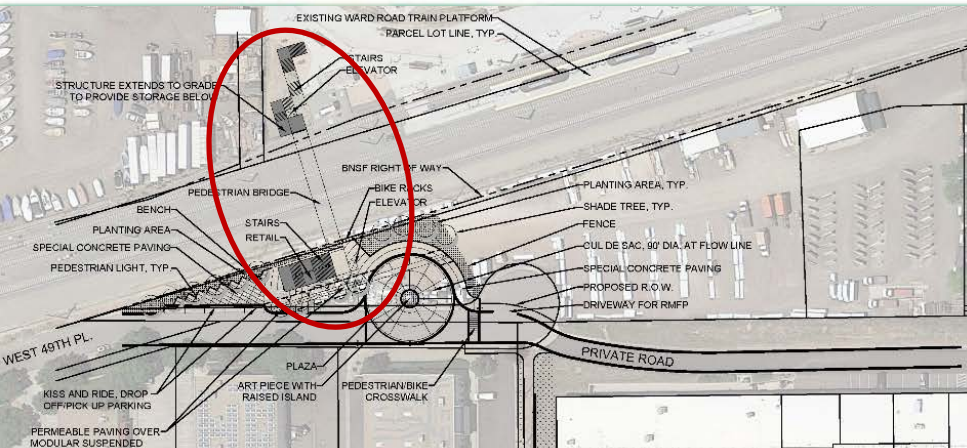


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	Date:	Comments	Init.	File Name: Ward Rd_W 50th Ave_Exhibit.dgn				PLAN VIEW			
				Horiz. Scale: 1:40 Vert. Scale: As Noted				Designer: M. KRELL			
				Unit Information Unit Leader Initials				Detailer: A. LAVERY			



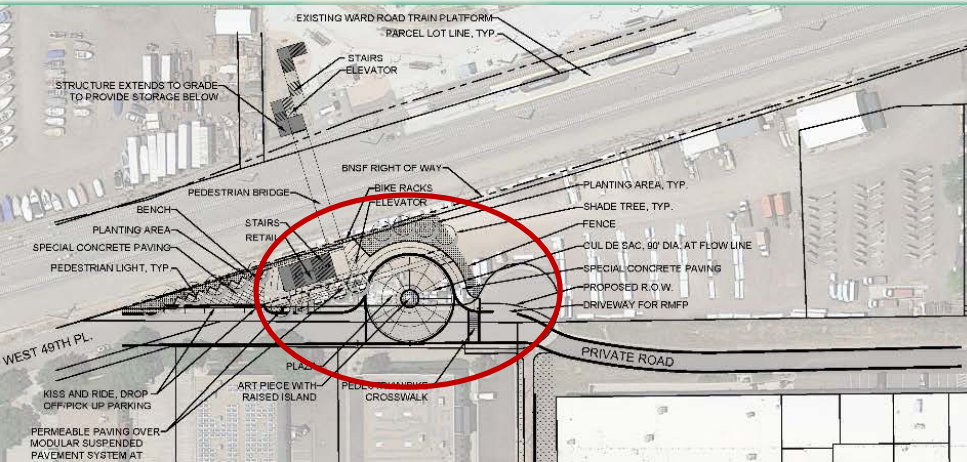
Pedestrian Bridge/Plaza

EXHIBIT C

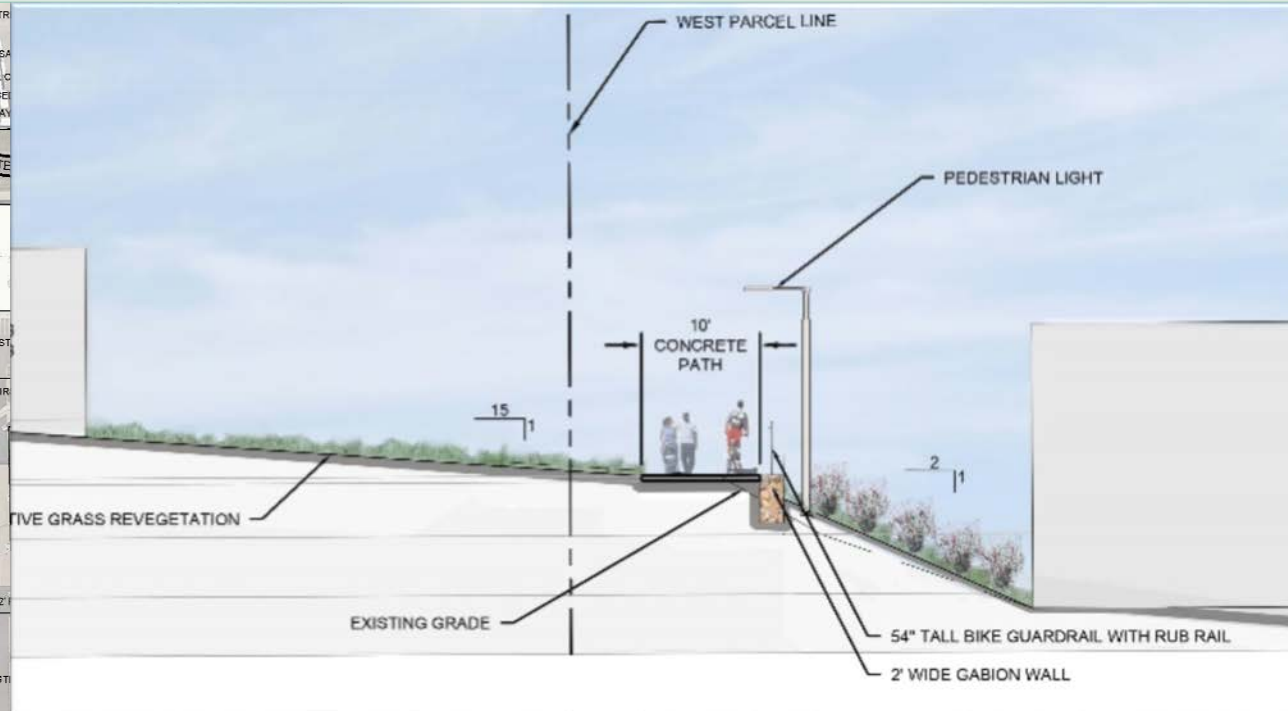
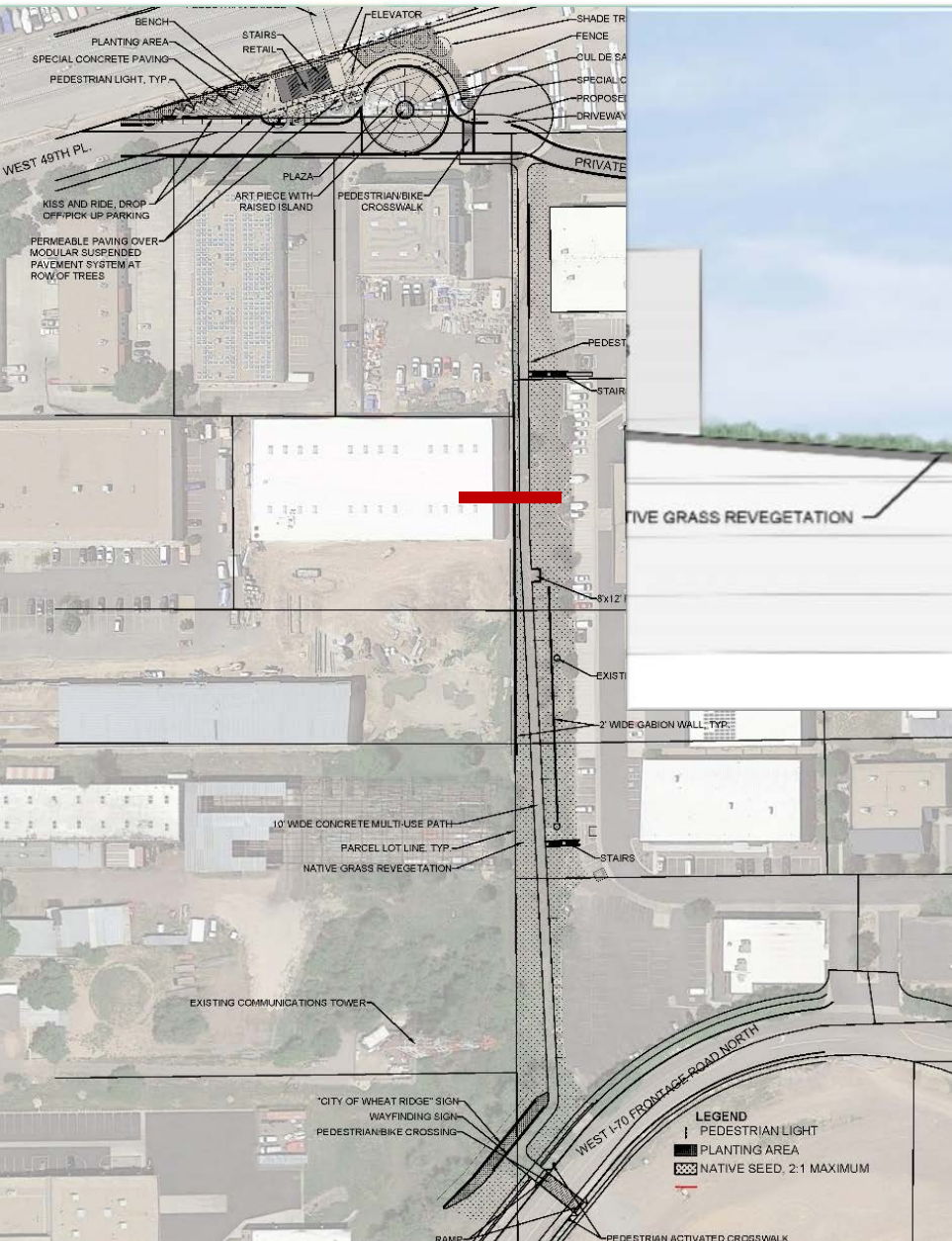


ATTACHMENT 4

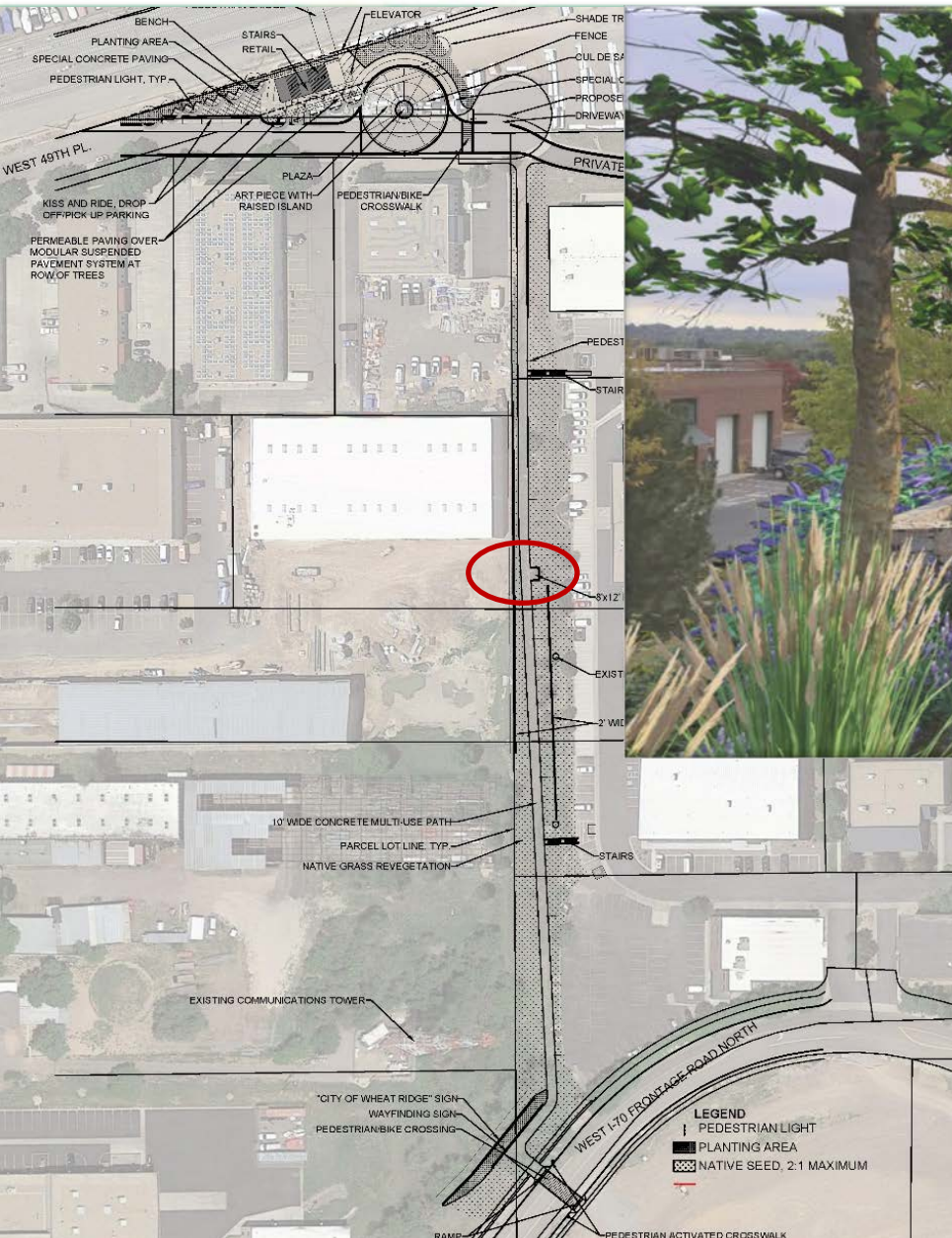
Pedestrian Bridge/Plaza



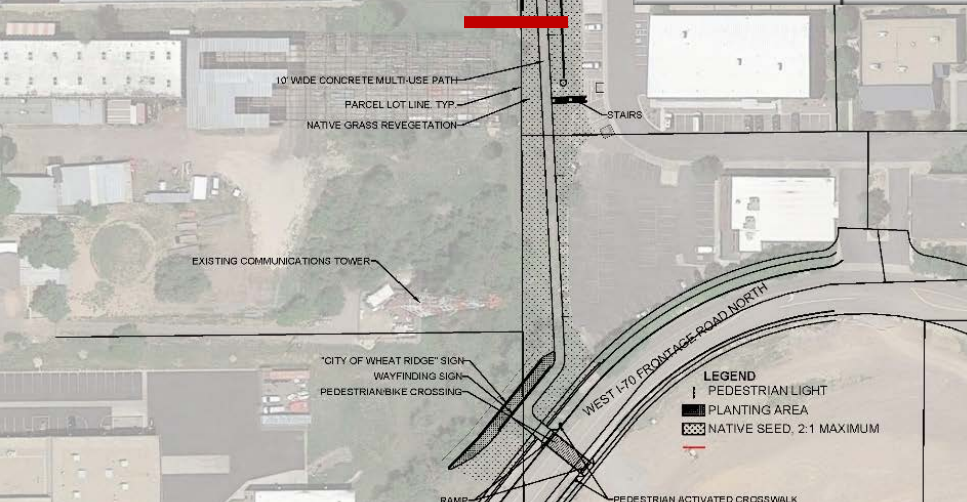
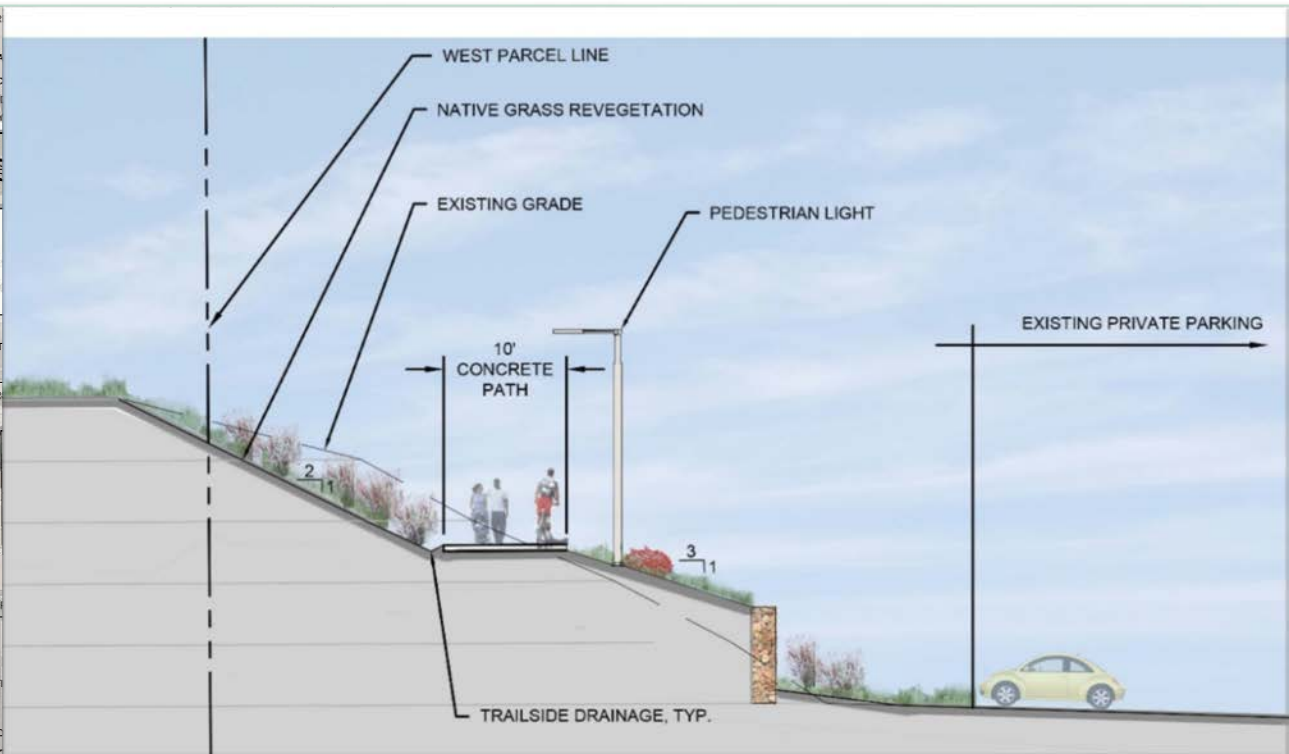
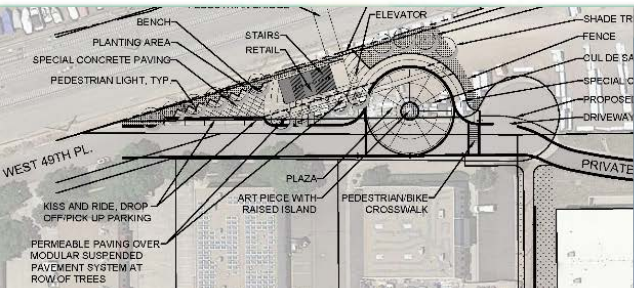
Linear Park



Linear Park



Linear Park



South Entrance



REQUEST FOR CITY COUNCIL ACTION


TITLE: RESOLUTION NO. 49-2019 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF MOUNTAIN VIEW REGARDING STORMWATER DRAINAGE IMPROVEMENTS

☐ PUBLIC HEARING
☐ BIDS/MOTIONS
☒ RESOLUTIONS

☐ ORDINANCES FOR 1ST READING
☐ ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: ☐ YES ☒ NO


Engineering Manager


City Manager

ISSUE:

The City has been approached by the City of Mountain View for help in resolving a drainage issue at the intersection of 41st Avenue and Fenton Street. Mountain View would like to construct curb/gutter, an inlet, and stormsewer to intercept, collect, and convey runoff to a regional stormsewer system in Fenton Street.

PRIOR ACTION:

None.

FINANCIAL IMPACT:

None.

BACKGROUND:

Runoff from the area southwest of 41st Avenue and Eaton Street flows across 41st Avenue and negatively impacts properties on the north side of 41st Avenue between Eaton and Fenton Streets. While there is a regional stormsewer system along Eaton Street, 41st Avenue, and Fenton Street, there are no stormwater facilities on the north side of 41st Avenue to intercept, collect, and convey runoff into that system.

Mountain View proposes to construct curb/gutter along the north side of 41st Avenue to intercept the runoff flowing across 41st Avenue from the south. The runoff would be directed to the west to a proposed inlet on Fenton Street. The runoff will be collected by the inlet and conveyed to the regional stormsewer system in a proposed pipe that crosses Fenton Street. The proposed pipe will connect to the regional stormsewer system with a new manhole.

Mountain View will be responsible for constructing, inspecting and maintaining the proposed improvements.

RECOMMENDATIONS:

Staff recommends approving the intergovernmental agreement with the City of Mountain View regarding the proposed stormwater drainage improvements by the City of Mountain View.

RECOMMENDED MOTION:

“I move to approve Resolution No. 49-2019, a resolution approving an intergovernmental agreement with the City of Mountain View regarding the Stormwater Drainage Improvements.”

Or,

“I move to postpone indefinitely Resolution No. 49-2019, a resolution approving an intergovernmental agreement with the City of Mountain View regarding the Stormwater Drainage Improvements for the following reason(s),

_____.”

REPORT PREPARED/REVIEWED BY:

Mark Westberg, Project Supervisor
Steve Nguyen, Acting Public Works Director
Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 49-2019
2. IGA Regarding Stormwater Drainage Improvements
3. Exhibit A – Scope of Work

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 49
Series of 2019

TITLE: RESOLUTION NO. 49-2019 - A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF MOUNTAIN VIEW REGARDING STORMWATER DRAINAGE IMPROVEMENTS

WHEREAS, Wheat Ridge and Mountain View are neighboring municipalities that share a common boundary line within certain public rights-of-way, including West 41st Avenue and Fenton Street; and

WHEREAS, the City of Mountain View has programmed various stormwater drainage improvements on West 41st Avenue and Fenton Street; and

WHEREAS, the City of Mountain View has agreed to cover the cost of the improvements; and

WHEREAS, the City of Mountain View will oversee construction of those street improvements; and

WHEREAS, the City of Mountain View will maintain the stormwater drainage improvements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, that:

Section 1. Agreement Approved.

The Intergovernmental Agreement with the City of Mountain View Regarding Stormwater Drainage Improvements is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

Section 2. This Resolution shall be effective immediately upon adoption.

DONE AND RESOLVED this 9th day of September 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

INTERGOVERNMENTAL AGREEMENT STORMWATER DRAINAGE IMPROVEMENTS

This Intergovernmental Agreement (the "Agreement") is made and entered into this ____ day of _____, 2019 (the "Effective Date") by and between the Town of Mountain View, a Colorado home rule municipal corporation ("Mountain View") and the City of Wheat Ridge, a Colorado home rule municipal corporation ("Wheat Ridge") (each individually a "Party" and collectively the "Parties").

WHEREAS, C.R.S. § 29-1-203 authorizes the Parties to cooperate and contract with one another regarding functions, services and facilities each is authorized to provide;

WHEREAS, the Parties own and operate individual stormwater drainage systems;

WHEREAS, Wheat Ridge owns and operates a regional stormwater drainage pipeline under Fenton Street, which could assist in the transportation of stormwater flow from tributary areas to the south of W. 41st Avenue and Eaton Street;

WHEREAS, the Parties recognize the significant benefit to their customers to cooperate in stormwater infrastructure;

WHEREAS, the Parties specifically recognize that the shared use of stormwater drainage avoids the unnecessary duplication of such infrastructure; and

WHEREAS, the Parties desire to enter into this Agreement to demonstrate a commitment to cooperate in the development of stormwater drainage improvements and to use the stormwater line owned by Wheat Ridge to transport stormwater flows captured south of W. 41st Avenue and Eaton Street.

NOW THEREFORE, the Parties, in and for the consideration of the performance of the mutual promises set forth herein, the receipt and adequacy of which is hereby acknowledged, for themselves and their successors, do hereby agree as follows:

1. Stormwater Drainage Improvements (the "Improvements"). The Parties agree that Mountain View shall be responsible for constructing and maintaining the Improvements at its sole cost. The Improvements will convey flows from tributary areas to the south of W. 41st Avenue. The Improvements are comprised of curb and gutter, 10' type R inlet, 24" RCP and a manhole that connects to the existing 60" RCP storm line in Fenton Street, all as more particularly set forth in **Exhibit A**.

2. Conditions of Construction. Mountain View agrees to obtain any required permits for construction of Improvements in Wheat Ridge rights-of-way prior to commencing construction and to provide Wheat Ridge with a detailed set of as-builts plans within thirty (30) days of completion of Improvements.

3. Term. This Agreement shall become effective on the Effective Date and shall remain in effect until the Improvements are complete and as-builts provided per Paragraph 2 above, unless terminated by the Parties. Thereafter, only Paragraph 1 shall remain in effect.

4. Assignment. This Agreement may not be assigned in whole or in part without written consent of the other Party.

4. Relationship of Parties. This Agreement does not and shall not be construed as creating a relationship of joint ventures or partners between the Parties.

5. Modification. This Agreement may be modified, amended, changed or terminated, in whole or in part, only by an agreement in writing duly authorized and executed by the Parties. No consent of any third party shall be required for the negotiation and execution of any such agreement.

6. Waiver. The waiver of a breach of any provision of this Agreement by either Party shall not constitute a continuing waiver or a waiver of any subsequent breach of the same or another provision of this Agreement.

7. Integration. This Agreement contains the entire agreement between the Parties and no statement, promise, or inducement made by any Party or the agent of any Party that is not contained in this Agreement shall be valid or binding.

8. Severability. Invalidation of any of the provisions of this Agreement or of any paragraph, sentence, clause, phrase, or work herein, or the application thereof in any given circumstance, shall not affect the validity of any other provision of this Agreement.

9. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Jefferson County, Colorado.

10. Fax and Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be an original, but all of which when taken together shall constitute one Agreement. In addition, the parties agree to recognize signatures of this Agreement transmitted by telecopy or email as if they were original signatures.

11. Insurance; Negligence; No Waiver of Governmental Immunity. Each Party is responsible for its own negligent acts and omissions. The Parties, their directors, officers, agents and employees are relying upon and do not waive or abrogate, or intend to waive or abrogate by any provision of this Agreement, the monetary limitations or any other rights, immunities, or protections afforded by the Colorado Governmental Immunity Act, C.R.S § 24-10-101, *et seq.* as the same may be amended.

12. TABOR. Notwithstanding other provisions in this Agreement to the contrary, the Parties understand and acknowledge that they are subject to Article X, § 20 of the Colorado Constitution ("TABOR").

a. The Parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement.

b. It is understood and agreed that this Agreement does not create a multi-fiscal year direct or indirect debt or obligation within the meaning of TABOR and, therefore, notwithstanding anything in this Agreement to the contrary, all payment obligations of the Parties are expressly

dependent and conditioned upon the continuing availability of funds beyond the term of the Parties' current fiscal period ending upon the next succeeding December 31.

c. Financial obligations of the Parties payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with ordinances and resolutions of the responsible Party and other applicable law.

d. Failure of a Party to make appropriation of amounts required in any fiscal year, if not promptly cured, shall result in termination of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement, effective as of the day and year first above written.

CITY OF WHEAT RIDGE

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

APPROVED AS TO FORM:

Gerald E. Dahl, City Attorney

TOWN OF MOUNTAIN VIEW

By: _____
Glenn Levy, Mayor

ATTEST:

Sarah Albright, Town Clerk

APPROVED AS TO FORM:

Evin B. King, City Attorney

EXHIBIT A

Improvements Scope of Work

[Attached]

48 hours before you dig, CALL UTILITY
NOTIFICATION CENTER OF COLORADO (UNCC)

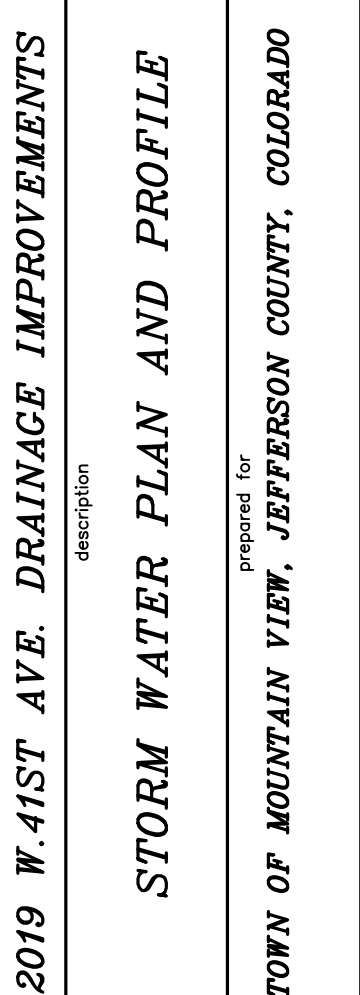
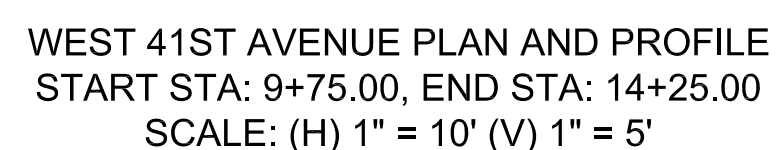
811

Gas, Electric, Telephone, CATV, and
Panhandle Eastern Pipeline Locations

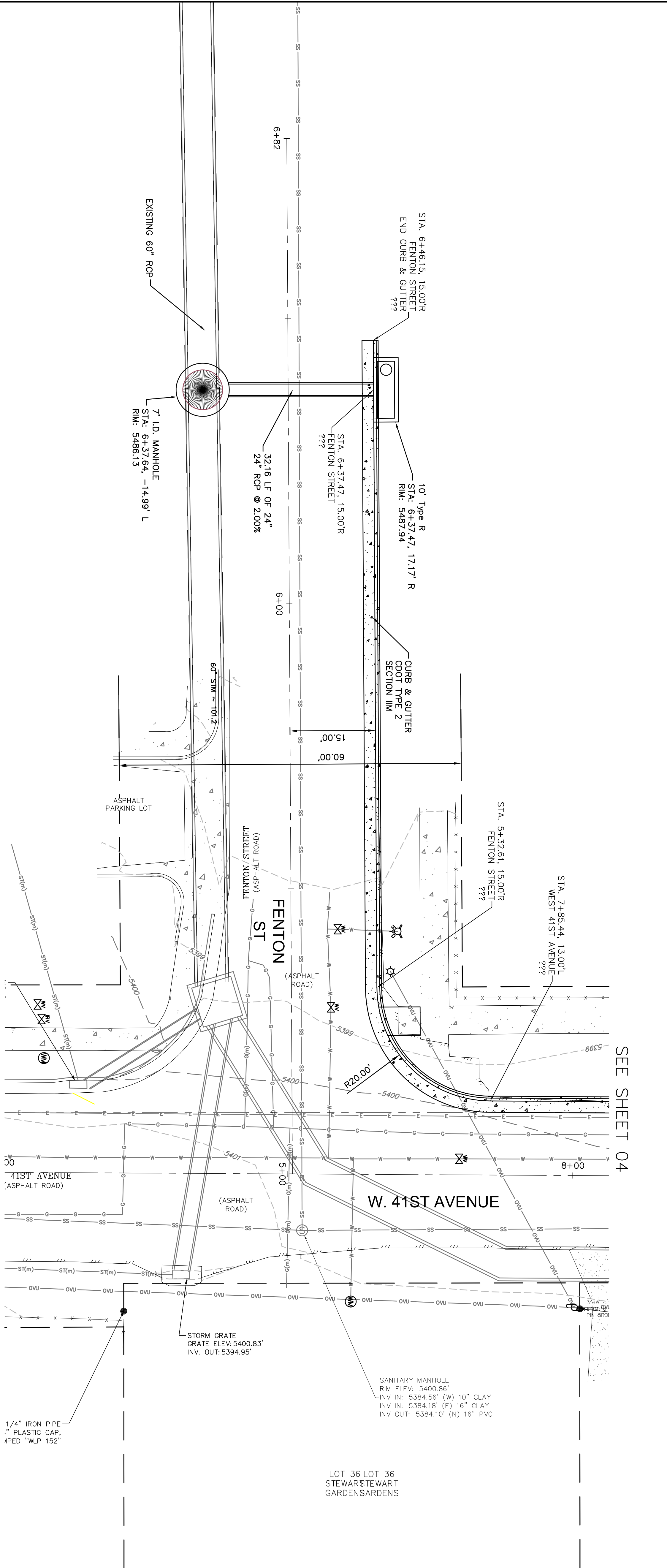
SCALE VERIFICATION

BAR IS ONE INCH ON ORIGINAL DRAWING

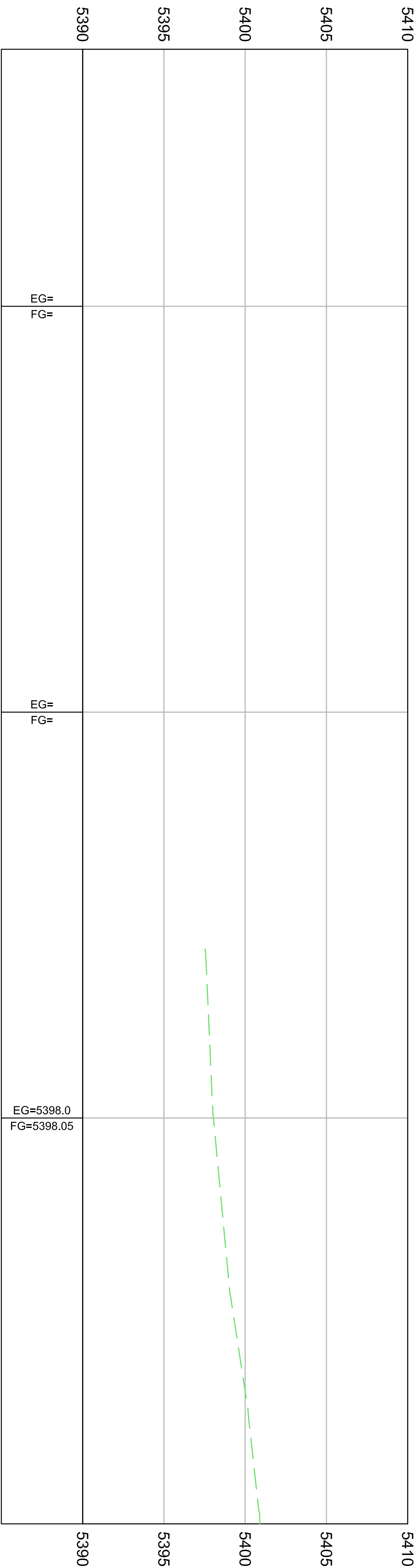
IF NOT ONE INCH ON THIS SHEET
SCALE ACCORDINGLY



DRAWN BY: TMC	DESIGNED BY: JL
JOB NUMBER: 1104.0006	
DATE: DECEMBER 2018	
SCALE: 1"=10'	
DRAWING NAME: 04	
SHEET NO: 04 of 6	



FENTON STREET PLAN AND PROFILE
START STA: 5+00.00, END STA: 6+81.66
SCALE: (H) 1" = 10' (V) 1" = 5'



2019 W. 41ST AVE. DRAINAGE IMPROVEMENTS

description

STORM WATER PLAN AND PROFILE

prepared for

TOWN OF MOUNTAIN VIEW, JEFFERSON COUNTY, COLORADO

RG AND ASSOCIATES, LLC
4885 Ward Road, Suite 100 • Wheat Ridge, CO • 80033
303-293-8107 • 303-293-8106 (fax) • www.rgengineers.com

REVISIONS			
NO.	DESCRIPTION	DATE	BY
0	ISSUED FOR REVIEW	XX/XX/XXXX	PR

48 hours before you dig, CALL UTILITY NOTIFICATION CENTER OF COLORADO (UNCC)

811

Gas, Electric, Telephone, CATV, and Panhandle Eastern Pipeline Locations

SCALE VERIFICATION
BAR IS ONE INCH ON ORIGINAL DRAWING
IF NOT ONE INCH ON THIS SHEET SCALE ACCORDINGLY

DRAWN BY:	TMC	DESIGNED BY:	JL
JOB NUMBER:	1104.0006	DATE:	DECEMBER 2018
SCALE:	1"=10'	DRAWING NAME:	05
SHEET NO:	05	of	6


REQUEST FOR CITY COUNCIL ACTION

TITLE: RESOLUTION NO. 50-2019 – A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE WEST METRO FIRE PROTECTION DISTRICT AND THE CITY OF WHEAT RIDGE CONCERNING DUI BLOOD DRAW SERVICES

- | | |
|-------------------------------------------------|-----------------------------------------------------------------|
| <input type="checkbox"/> PUBLIC HEARING | <input type="checkbox"/> ORDINANCES FOR 1 ST READING |
| <input type="checkbox"/> BIDS/MOTIONS | <input type="checkbox"/> ORDINANCES FOR 2 ND READING |
| <input checked="" type="checkbox"/> RESOLUTIONS | |

QUASI-JUDICIAL: ☐ YES ☒ NO


Interim Chief of Police


City Manager

ISSUE:

In the State of Colorado, those under arrest for driving under the Influence (DUI) of Drugs or Alcohol are required to take a chemical test in order to determine the level of substances within their system. In the case of alcohol, the driver may choose between a blood test or a breath test. In the case of drugs, only blood tests are available. Paramedics from the West Metro Fire Protection District (WMFPD) perform those blood draws from Wheat Ridge Police arrestees.

PRIOR ACTION:

On March 28, 2016, Council dissolved the IGA with Rural Metro Ambulance Service. The fire protection districts in the City have provided ambulance service to the citizens of Wheat Ridge since that time.

FINANCIAL IMPACT:

The price for a single blood draw is \$35 in 2019 and expected to rise to \$45 in 2020. \$35 is the same as the City paying Rural Metro and what has been paid to WMFPD since April of 2016.

BACKGROUND:

The attached Memorandum of Understanding (MOU) is a continuation of services from the time the City switched from a private ambulance contractor to fire district based ambulance services.

The MOU outlines the cost of services as well as notification processes, chain of evidence, documentation requirements, and availability for courtroom testimony.

RECOMMENDATIONS:

Staff recommends that the City of Wheat Ridge enter into an MOU with the West Metro Fire Protection District for blood draw services.

RECOMMENDED MOTION:

“I move to approve Resolution No. 50-2019, a resolution approving the memorandum of Understanding between the West Metro Fire Protection District and the City of Wheat Ridge concerning DUI blood draw services.”

Or,

“I move to postpone indefinitely Resolution No. 50-2019, a resolution approving the memorandum of Understanding between the West Metro Fire Protection District and the City of Wheat Ridge concerning DUI blood draw services for the following reason(s)
_____.”

REPORT PREPARED/REVIEWED BY:

Dave Pickett, Interim Chief of Police

Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 50-2019
2. MOU Concerning Blood Draw Services

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 50
Series of 2019

TITLE: A RESOLUTION APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE WEST METRO FIRE PROTECTION DISTRICT AND THE CITY OF WHEAT RIDGE CONCERNING DUI BLOOD DRAW SERVICES

WHEREAS, the City of Wheat Ridge, Colorado (the “City”), acting through its City Council (“Council”), is a home rule municipality with statutory and constitutional authority to provide law enforcement services; and

WHEREAS, the West Metro Fire Protection District (WMFPD) is a special district, duly organized and authorized to provide certain first-responder services, including EMS services; and

WHEREAS, from time to time, the Wheat Ridge Police Department (WRPD) has the need to draw blood from DUI suspects for evidentiary purposes; and

WHEREAS, WMFPD employs persons qualified to perform on-scene blood draws; and

WHEREAS, the City therefore wishes to enter into an agreement with WMFPD to request WMFPD personnel to perform DUI blood draw services, when possible, and to establish the terms thereof; and

WHEREAS, Section 14.2 of the Wheat Ridge Home Rule Charter authorizes the Council, acting by resolution or ordinance, to approve such agreements.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

The attached Memorandum of Understanding between the West Metro Fire Protection District and the City of Wheat Ridge concerning DUI blood draw services, is hereby approved. The Mayor and Clerk are authorized to execute the same.

DONE AND RESOLVED this 9th day of September 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

ATTACHMENT 1

Memorandum of Understanding Concerning DUI Blood Draws

This Memorandum of Understanding (MOU) concerning DUI blood draws is entered into by and between the West Metro Fire Protection District (WMFPD) and the City of Wheat Ridge (City).

The terms and conditions of this MOU are as follows:

1. Contacts

- a. City: Wheat Ridge Police Department (WRPD) Chief of Police, or designee.
- b. WMFPD: The EMS Chief, or designee.

2. Procedure

- a. WRPD will notify Jeffcom to request a DUI blood draw.
 - i. If WMFPD is on scene of an accident where WRPD has the authority and they request a blood draw, it can take place in the back of the WMFPD Medic Unit, if it does not hamper or delay the transport or treatment of the suspect.
 - b. WRPD will provide the materials for the blood draw in the form of an evidence kit.
 - c. WMFPD personnel will perform the blood draw and sign necessary paperwork required for chain of custody.
 - d. WMFPD will author an incident report, which will be stored in the WMFPD records management system. Copies of the report may be requested through the Medical Reports Custodian at WMFPD.
 - e. The suspect shall not be considered a patient for HIPPA purposes and WMFPD does not provide medical clearance of any kind. If, for whatever reason, the suspect presents injured or sick, they will then be treated as a patient under the Denver Metro Paramedic Protocols. Medical care will then be transferred to WMFPD.
3. WMFPD does not provide felony or serial blood draw services.
4. In the event that a WMFPD employee(s) is summoned to testify in court, the cost for employee time shall be the responsibility of WMFPD.

5. This MOU will be valid once agreed upon and signed by both parties.
6. Thirty-day notice is required to terminate this MOU, for any reason, including for convenience only.
7. The price for requested blood draw services is \$35.00 per suspect.
8. WMFPD will submit an invoice on a quarterly basis to WRPD for payment. The terms of the invoice shall be 45 days.

X

Don Lombardi
Fire Chief, WMFPD

Date signed: _____

X

Bud Starker, Mayor

Date signed: _____

ATTEST:

Janelle Shaver, City Clerk

REQUEST FOR CITY COUNCIL ACTION

TITLE: COUNCIL BILL NO. 13-2019 – AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS CONCERNING PROCEDURES FOR PROTESTS UNDER SECTION 5.10 OF THE HOME RULE CHARTER (CASE NO. ZOA-19-03)

☒ PUBLIC HEARING
☐ BIDS/MOTIONS
☐ RESOLUTIONS

☐ ORDINANCES FOR 1ST READING (08/26/2019)
☒ ORDINANCES FOR 2ND READING (09/09/2019)

QUASI-JUDICIAL: ☐ YES

☒ NO



City Attorney



City Manager

ISSUE:

The City Charter includes a provision allowing for a protest to be filed against a zone change request. If a protest is received, the rezoning ordinance must be approved by a $\frac{3}{4}$ vote of the entire Council (6 votes). The purpose of this code amendment is to clarify the protest procedure for rezoning decisions and to enact a delay in the public hearing in the event a protest is received.

PRIOR ACTION:

On July 1, 2019, City Council discussed the issue at a study session and directed staff to draft an ordinance that would amend the code to clarify the procedural mandate of the City Charter. At a public hearing on August 15, 2019 before the Planning Commission, a motion for approval failed by a vote of 1 to 6. The Commission acknowledged that the code amendment does not affect their review, but found public comment in opposition to be compelling. There was no public comment in support of the ordinance. Draft meeting minutes from the public hearing are enclosed.

FINANCIAL IMPACT:

The proposed ordinance is not expected to have a financial impact on the City.

BACKGROUND:

The City's zoning code outlines the procedures for three types of zone change actions: a private rezoning request (Section 26-112), a City-initiated zone change request (Section 26-113), and a zone change request to a planned development through approval of an outline development plan (Section 26-303). Each of these rezoning requests is required to be approved by ordinance subsequent to a public hearing, and per Charter all ordinances require five positive votes from Council for approval (Charter Section 5.9).

The Charter goes on to provide in Section 5.10 that a protest may be filed against a zone change request by property owners in the area. The property area requirements are:

- 20% or more of property owners included within the property subject to a zone change; or
- 20% or more of property owners immediately adjacent to the rear or any side of the subject property extending 100 feet; or
- 20% or more of property owners directly opposite the street extending 100 feet from the street frontage opposite the subject property.

In the event a protest is received that meets one of these three area requirements, the rezoning ordinance must receive a $\frac{3}{4}$ vote of the entire Council (6 votes) for passage. The Charter requires the written protest to be submitted to the City Council "no later than the hearing on the proposed amendment."

Written protests can be received prior to the public hearing or can be submitted during the hearing so long as it is received before the public hearing is closed. In recent years, protests have most often been received on the day of a hearing or at the start of the hearing.

Proposed Code Amendment

While Council may not change in any way the right to file a protest, the area requirements, or the deadline for receiving a protest; Council can and has adopted code amendments to clarify Charter provisions.

In this case, the proposed code amendment does the following:

- Specifies staff's obligation to confirm the protest meets the ownership and area requirements of the charter,
- Clarifies and graphically illustrates the area requirements of the charter,
- Obligates Council to continue the public hearing to a future meeting if a protest is validated, and
- Clarifies the process by which a protest may be rescinded.

RECOMMENDATIONS:

Staff recommends approval of the ordinance.

RECOMMENDED MOTION:

“I move to approve Council Bill No. 13-2019, an ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions, on second reading, order it published, and that it take effect 15 days after final publication.”

Or,

“I move to postpone indefinitely the ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions.”

REPORT PREPARED BY:

Lauren Mikulak, Planning Manager

Jerry Dahl, City Attorney

Patrick Goff, City Manager

ATTACHMENTS:

1. Council Bill No. 13-2019
2. Draft Planning Commission Meeting Minutes – August 15, 2019

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER HOPPE
Council Bill No. 13
Ordinance No. _____
Series 2019

TITLE: AN ORDINANCE AMENDING THE WHEAT RIDGE CODE OF LAWS CONCERNING PROCEDURES FOR PROTESTS UNDER SECTION 5.10 OF THE HOME RULE CHARTER

WHEREAS, the City of Wheat Ridge is a home rule municipality having all powers conferred by Article XX of the Colorado Constitution; and

WHEREAS, the City Council has exercised these powers by the adoption of Chapter 26 of the Wheat Ridge Code of Laws (the "Code") concerning zoning and development; and

WHEREAS, Section 5.10 of the Home Rule Charter provides for the filing of protests by adjacent property owners concerning amendments to the restrictions and boundaries of zone districts; and

WHEREAS, The Council wishes to provide for procedures to implement Charter Section 5.10,

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Section 26-112.C.7 of the Code of Laws is amended to read:

7. In the event of a legal protest against such change of zone, under the procedure set forth in section 5-10 of the home rule charter, a zone change shall not be approved except by the favorable vote of three-fourths ($\frac{3}{4}$) of the entire city council. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning ordinance. **THE PROCEDURE SHALL BE AS FOLLOWS:**
 - a. **THE COMMUNITY DEVELOPMENT STAFF SHALL REVIEW THE PROTEST TO CONFIRM THE SIGNERS THEREOF AS OWNERS OF THE REQUIRED PROPERTY AND ITS COMPLIANCE WITH THE PROPERTY AREA REQUIREMENTS OF CHARTER 5.10.**
 - b. **IF NECESSARY, THE MAYOR SHALL DECLARE A RECESS OR ASK THAT THE HEARING BE CONTINUED TO ENABLE THE COMMUNITY DEVELOPMENT STAFF TO PERFORM THEIR REVIEW.**
 - c. **IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST DOES NOT MEET THE OWNER OR AREA REQUIREMENTS OF CHARTER 5.10, NO FURTHER ACTION SHALL BE TAKEN, THE HEARING MAY BE**

CONDUCTED AND CLOSED, AND THE COUNCIL MAY ACT WITHOUT THE $\frac{3}{4}$ MAJORITY VOTING REQUIREMENT.

- d. IF THE COMMUNITY DEVELOPMENT STAFF DETERMINES THE PROTEST MEETS THE OWNER AND AREA REQUIREMENTS OF CHARTER 5.10, THE COUNCIL SHALL ACT TO CONTINUE THE HEARING TO THE NEXT REGULAR OR SPECIAL MEETING OF THE COUNCIL, AT WHICH ANY ADDITIONAL TESTIMONY MAY BE TAKEN. UPON THE CLOSE OF THE HEARING, THE COUNCIL MAY ACT, SUBJECT TO THE $\frac{3}{4}$ MAJORITY REQUIREMENT OF CHARTER 5.10.
- e. THE PROTEST AREA AND OWNER REQUIREMENTS OF CHARTER 5.10, WHICH PROVIDE, IN PERTINENT PART:

IN THE EVENT OF A PROTEST AGAINST SUCH CHANGES SIGNED BY THE OWNERS OF TWENTY (20) PERCENT OR MORE OF THE AREA:

*(1) OF THE PROPERTY INCLUDED WITHIN THE PROPOSED CHANGE;
OR,*

(2) OF THOSE IMMEDIATELY ADJACENT TO THE REAR OR ANY SIDE OF THE PROPERTY, EXTENDING ONE HUNDRED (100) FEET FROM THE PROPERTY; OR,

(3) OF THOSE DIRECTLY OPPOSITE ACROSS THE STREET FROM THE PROPERTY, EXTENDING ONE HUNDRED (100) FEET FROM THE STREET FRONTAGE OF SUCH OPPOSITE PROPERTY,

SHALL EXTEND TO THOSE PROPERTY OWNERS WITHIN 100 FEET OF THE SUBJECT PROPERTY, INCLUDING THOSE LOCATED DIAGONALLY ADJACENT TO THE CORNERS OF THE SUBJECT PROPERTY, AS ILLUSTRATED IN FIGURE 26-112.1.

- f. A PROTEST, ONCE FILED AND DETERMINED BY THE COMMUNITY DEVELOPMENT STAFF TO COMPLY WITH THE OWNER AND AREA REQUIREMENTS OF CHARTER 5.10, MAY BE RESCINDED ONLY IN A WRITTEN INSTRUMENT, SIGNED BY THE SAME PERSON(S) AS THE PROTEST, AND PRESENTED TO THE CITY CLERK PRIOR TO FINAL COUNCIL ACTION ON THE MATTER.

FIGURE 26-112.1

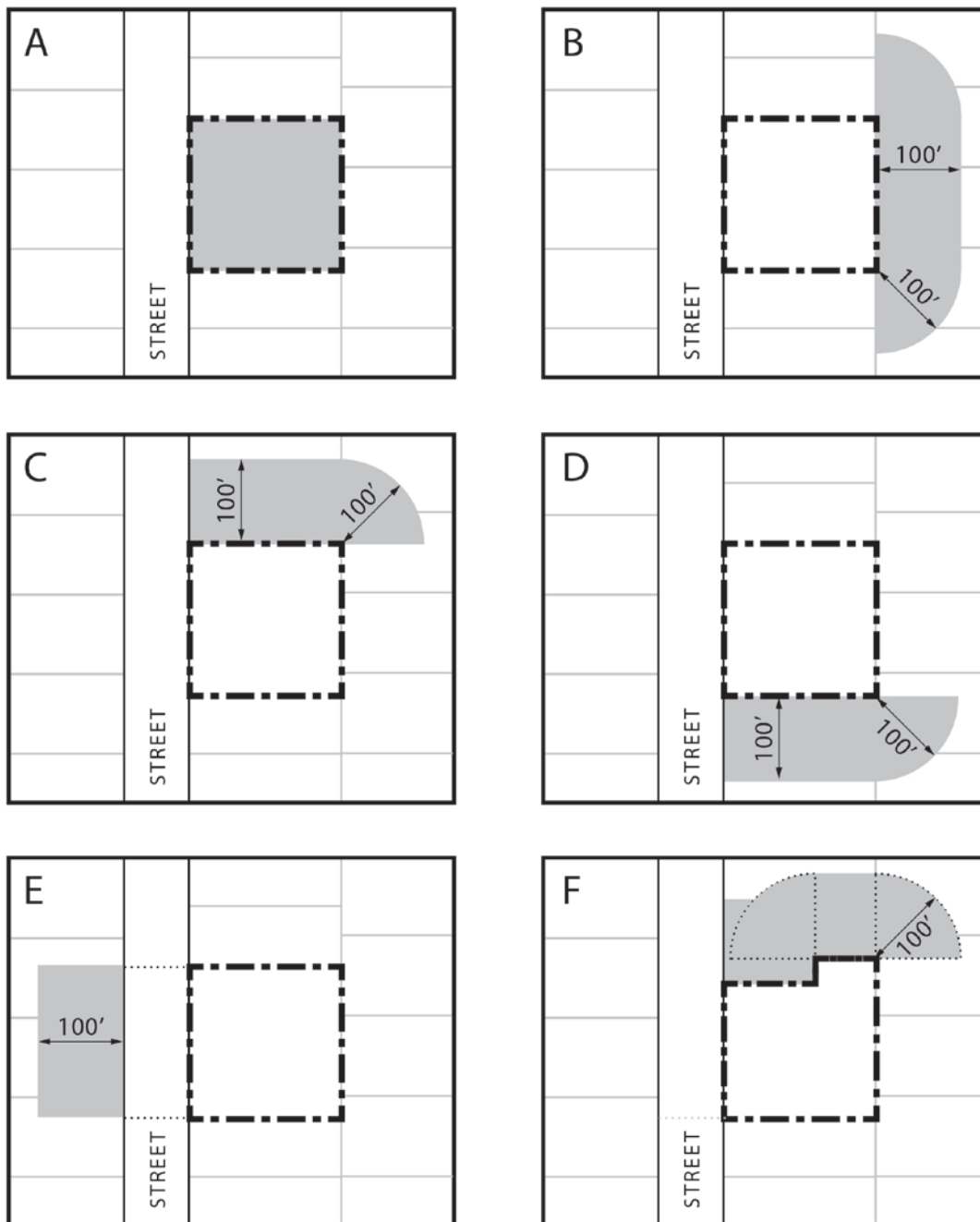


FIGURE 26-112.1 – PROTEST AREA. IMAGES A-F ILLUSTRATE THE PROPERTY AREA REQUIREMENTS OF CHARTER 5.10 AND SECTION 26-112.C.7: A) PROPERTY INCLUDED WITHIN THE PROPOSED CHANGE; B) PROPERTY WITHIN 100 FEET EXTENDING FROM THE REAR OF THE SUBJECT SITE; C AND D) PROPERTY WITHIN 100 FEET EXTENDING FROM ANY SIDE OF THE SUBJECT SITE; E) PROPERTY DIRECTLY OPPOSITE ACROSS THE STREET FROM THE PROPERTY EXTENDING 100 FEET FROM THE STREET FRONTAGE OPPOSITE THE SUBJECT SITE. IMAGE F ILLUSTRATES THE PROPERTY AREA REQUIREMENT AS APPLIED TO AN IRREGULAR SIDE LOT LINE.

Section 2. Section 26-106 of the Code of Laws is amended to revise footnote 2 to read:

Right of Protest applies: See section 5-10 of the Home Rule Charter **AND CODE SECTION 26-112.C.7.**

Section 3. Section 26-113.B.3 of the Code of Laws is amended to read:

3. *City council action.* Upon receipt of the planning commission's recommendation, the city council shall hold a public hearing on the proposal. The hearing conducted on second reading of the proposed rezoning ordinance shall satisfy this requirement. Notice of the hearing shall be the same as for the planning commission hearing; however, publication of the ordinance on first reading, together with any required map, shall meet the newspaper publication requirement. The city council, in addition to consideration of the planning commission record, shall hear additional evidence and testimony presented and either approve, approve with modifications, or reject the ordinance. The city council shall base its decision upon all evidence presented, with due consideration of the criteria for review set forth under subsection 26-112.D.

~~In the event of a protest against such change of zone, signed by the owners of twenty (20) percent or more of the area:~~

- ~~1. Of the property included within the proposed change; or~~
- ~~2. Of those immediately adjacent to the rear or any side of the property, extending one hundred (100) feet from the property; or~~
- ~~3. Of those directly opposite across the street from the property, extending one hundred (100) feet from the street frontage of such opposite property, such change shall not become effective except by the favorable vote of three-fourths (¾) of the entire city council. Where land within the area proposed for change, or adjacent or opposite land, as defined above, is owned by the City of Wheat Ridge, such property shall be excluded in computing the required twenty (20) percent, and owners of non-city land within the one hundred foot limit, as defined above, shall be considered adjacent or opposite despite such intervening city land. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning.~~

IN THE EVENT OF A LEGAL PROTEST AGAINST SUCH CHANGE OF ZONE, UNDER THE PROCEDURE SET FORTH IN SECTION 5-10 OF THE HOME RULE CHARTER, A ZONE CHANGE SHALL NOT BE APPROVED EXCEPT BY THE FAVORABLE VOTE OF THREE-FOURTHS (¾) OF THE ENTIRE CITY COUNCIL. THE WRITTEN PROTEST TO SUCH CHANGE SHALL BE SUBMITTED TO THE CITY COUNCIL NO LATER THAN THE HEARING ON THE PROPOSED REZONING ORDINANCE. THE PROCEDURE AT CODE 26-112.C.7 SHALL BE FOLLOWED.

Section 4. Section 26-303.A.7 of the Code of Laws is amended to read:

7. In the event of a legal protest against the rezoning component of the planned development approval, under the procedure set forth in section 5-10 of the home rule charter, a zone change shall not be approved except by the favorable vote of three-fourths ($\frac{3}{4}$) of the entire city council. The written protest to such change shall be submitted to the city council no later than the hearing on the proposed rezoning ordinance. **THE PROCEDURE AT CODE 26-112.C.7 SHALL BE FOLLOWED.**

Section 5. Severability Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 6. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of 7 to 1 on this 26th day of August, 2019, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge, and Public Hearing and consideration on final passage set for September 9, 2019, at 7:00 p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of ____ to ____, this 9th day of September 2019.

SIGNED by the Mayor on this 9th day of September 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved as to Form:

Gerald E. Dahl, City Attorney

First Publication: August 29, 2019
Second Publication: September 12, 2019
Wheat Ridge Transcript
Effective Date: September 27, 2019



PLANNING COMMISSION

Minutes of Meeting

August 15, 2019

1. CALL THE MEETING TO ORDER

The meeting was called to order by Chair OHM at 7:02 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL OF MEMBERS

Commission Members Present: Melissa Antol
Will Kerns
Daniel Larson
Scott Ohm
Richard Peterson
Jahi Simbai

Commission Members Absent: Janet Leo
Vivian Vos

Staff Members Present: Lauren Mikulak, Planning Manager
Stephanie Stevens, Senior Planner
Scott Cutler, Planner II
Mark Westberg, Engineering Projects Supervisor
Tammy Odean, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. APPROVE ORDER OF THE AGENDA

It was moved by Commissioner SIMBAI and seconded by Commissioner LARSON to approve the order of the agenda. Motion carried 6-0.

5. APPROVAL OF MINUTES – July 18, 2019

It was moved by Commissioner SIMBAI and seconded by Commissioner KERNS to approve the minutes of July 18, 2019, as written. Motion carried 5-0-1 with Commissioner PETERSON abstaining.

6. **PUBLIC FORUM** (This is the time for any person to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

7. **PUBLIC HEARING**

[...]

- D. **Case No. ZOA-19-03:** an ordinance amending Chapter 26 of the Code of Laws concerning the right of protest procedure for rezoning decisions.

Ms. Mikulak gave a short presentation regarding the ordinance.

Commissioner PETERSON wanted clarification on why there is no radius included on diagram E.

Ms. Mikulak explained that the language for a property across the street is worded differently and was interpreted not to need a radius because it states directly across the street. It could be changed.

Commissioner SIMBAI asked how a protest is verified if it happens during the hearing.

Ms. Mikulak said that if a protest is submitted during the hearing, staff reviews it. If the property is irregular in shape or multiple protests are submitted then it can be time consuming and it varies on whether there needs to be a recess or not.

Commissioner LARSON wanted to know why the Ordinance for legal protest is needing to be amended.

Ms. Mikulak explained that earlier this year there was a property owner that submitted a protest then rescinded it and currently there is no clarification on whether a property owner can do so. Also, it gives clarity as to the geographic requirements of the protest.

Commissioner OHM feels that this ordinance could be an issue for the developer because the hearing can be recessed or continued for a long time. Also, he feels that reopening the citizen's forum can further delay the hearing and a prolonged process does a disservice to the developer. He also mentioned he would like to see one graphic instead of six.

Ms. Mikulak reminded the Commissioner's that the Planning Division is a neutral party and this ordinance was drafted by the City Attorney on a request by City Council. The purpose is to let the public know this is serious and to attend the hearing and creates more engagement.

Commissioner PETERSON mentioned it is not appropriate to say this is an advantage for the developer.

Ms. Mikulak explained that this Ordinance will take away the element of surprise, which is beneficial to all parties.

Mr. LARSON asked if staff can figure out if a protest is valid quickly if the Mayor calls for a recess.

Ms. Mikulak said yes it is possible.

Commissioner OHM asked about the process for a legal protest.

Ms. Mikulak explained that a protest can come in anytime during the 2 weeks before a public hearing or during the hearing. She added the code amendment doesn't change the right to protest and this ordinance clarifies what we do when we get the protest. The hearing could then be continued if the protest is valid. This ordinance will not affect Planning Commission hearings, but it will affect City Council hearings.

Megan Schleicher, resident
10035 W 33rd Avenue

Ms. Schleicher said that the proposed ordinance can take time away from the citizens which can be very stressful if they need to attend a meeting twice. She also feels that if a legal protest is not valid than the citizen's rights are being taken away. She would like to see the maps in advance.

Syrma Quinones, resident
10270 W 33rd Avenue

Ms. Quinones feels time is taken away from the citizen's and feels it is a detriment to keep extending the hearings.

Ihor Figlus, resident
9775 West 36th Avenue

Mr. Figlus said this is a troubling ordinance and the changes are unnecessary. He feels it would be more appropriate for staff to prepare a list of addresses that could trigger the legal protests before the hearing. He also feels a delay in the hearing creates potential for undue influence on the protestor.

Elizabeth Grant, resident
3881 Estes Street

Ms. Grant does not feel 100 feet is enough for a legal protest and wants to see the geographic requirement extended.

Annette Bryce, resident
10250 W 33rd Avenue

Ms. Bryce would like to see the list of residents who live within 100 feet of a property before the public hearing.

Dan Bryce, resident
10250 W 33rd Avenue

Mr. Bryce does not like the graphics and does not feel the citizen's rights should be narrowed and the distance should be more than 100 feet.

Citizen's forum was closed by Commissioner OHM.

Commissioner OHM asked how the 100 feet was set for this ordinance and asked Ms. Mikulak to respond to the public comment.

Ms. Mikulak explained it was set by the Charter and the only way the Charter can be changed is by the vote of the people. She added that Planning Commission can include a condition in the recommendation to City Council for the radius in diagram E in the graphics. She then explained this code is coming from the direction of City Council. Ms. Mikulak also mentioned that the County's online maps includes parcel and property ownership information as well as measurement tools. The City has directed people to those resources, but does not produce a list of properties within 100 feet for the public.

Commissioner OHM asked if the proposed ordinance is mandating continuances.

Ms. Mikulak explained that the request in this ordinance will improve transparency and level the playing field. Staff is empathetic to the citizens that a Public Hearing on a Monday night that runs late or is continued is inconvenient. She mentioned there could soon be an online element for citizens to speak their voice.

Commissioners OHM, LARSON, PETERSON and JAHl said they do not plan on supporting this ordinance because it will be less efficient with too many continuances and found some of the public testimony to be compelling regarding inconvenience and potential influencing of a protester.

It was moved by Commissioner LARSON and seconded by Commissioner ANTOL to recommend APPROVAL of the proposed ordinance amending Chapter 26 of the Wheat Ridge Code of Laws concerning the right of protest procedure for rezoning decisions.

Motion failed 1-5 with Commissioners KERNS, LARSON, OHM, PETERSON and SIMBAI voting against.

8. OLD BUSINESS

9. NEW BUSINESS

Ms. Mikulak said that the next Planning Commission meeting will be held on September 5th; the meeting on September 19th has been cancelled and training for the Commissioners will be held during the October 3rd meeting.

She also mentioned that City Hall will be implementing new security measures starting August 19th. Anyone visiting City Hall will be required to check-in at the front desk by showing ID and will then receive a badge to visit different departments in the building. These new security measures are for the safety of staff and the citizens.

Ms. Mikulak also mentioned that today is the City of Wheat Ridge's 50th Birthday.

10. ADJOURNMENT

It was moved by Commissioner KERNS and seconded by Commissioner PETERSON to adjourn the meeting at 9:56 p.m. Motion carried 6-0.

Scott Ohm, Chair

Tammy Odean, Recording Secretary

REQUEST FOR CITY COUNCIL ACTION

TITLE: RESOLUTION NO. 51-2019 – A RESOLUTION APPROVING A TWO-LOT SUBDIVISION WITH VARIANCES FOR LOT WIDTH AND LOT SIZE FOR PROPERTY ZONED RESIDENTIAL-THREE (R-3) LOCATED AT 2810 AND 2816 BENTON STREET (CASE NO. WS-19-05 / HORTON SUBDIVISION)

☒ PUBLIC HEARING
☐ BIDS/MOTIONS
☒ RESOLUTIONS

☐ ORDINANCES FOR 1ST READING
☐ ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: ☒ YES

☐ NO


Community Development Director


City Manager

ISSUE:

The applicant is requesting approval of a two-lot subdivision with lot width and size variances. The purpose of the request is to allow for the two existing single-family homes to be contained on separate lots, with one also encompassing a carriage house which currently functions as a legally nonconforming third dwelling unit.

PRIOR ACTION:

Planning Commission reviewed this request at a public hearing held on August 15, 2019 and recommended approval of the major subdivision for the following reasons:

1. The application is in compliance with the review criteria.
2. The variance would not alter the essential character of the locality.
3. The proposed configuration is consistent with the Comprehensive Plan and other policy documents supported by the city by protecting the positive attributes of the community's established neighborhoods and promoting home ownership opportunities.
4. Special conditions exist which result in a particular and unique hardship.
5. The proposed lot layout is logical and enables the site to be retained for its historic use.
6. The request would not be detrimental to public safety or welfare.

Attached are the staff report and draft meeting minutes from the August 15 Planning Commission meeting.

FINANCIAL IMPACT:

Fees in the amount of \$1,425 were collected for the review and processing of Case No. WS-19-05.

BACKGROUND:

Existing Conditions

The properties are located just north of the 28th Avenue and Benton Street intersection, with frontage along Benton Street and alleyway access along the rear. The site is zoned Residential-Three (R-3) and is surrounded by other properties with residential zoning and land uses.

The total size of the subject site is 13,300 square feet or 0.30 acres. It is comprised of four lots which were originally established by the Lakeside Resubdivision in 1890, and contains two single-family homes and a carriage house. The existing homes were generally built between 1917 and 1970, pre-dating the City's zoning regulations. A converted chicken coop used as a fourth dwelling unit was attached to the carriage house, but has recently been demolished. The converted coop structure was not a legal or legally nonconforming dwelling, and as such, demolition was requested by the City. The carriage house is a legally nonconforming dwelling unit and may continue to exist as such under Section 26-120 (nonconforming uses).

The purpose of the request is to create legal lots for the two primary single-family homes as they exist today. Because of the history of site, there are several nonconformities related to the setbacks of existing structures, but the subdivision improves and does not increase any of the nonconformities.

Variance Request

The property is large enough to consolidate into one lot without the need for variances. In other words, if the single-family homes and carriage unit were demolished, no variance would be necessary and a one-lot subdivision plat to accommodate three townhomes would be allowed under the current zoning and could be reviewed administratively. Because the applicant is seeking to preserve the existing single-family homes, two lot-width variances and a lot size variance are necessary: a 6.6-foot variance from the lot width requirement for Lot 1, and a 13.36-foot variance from lot width and 2,029 square foot variance from the lot size requirement for Lot 2. Staff is recommending approval of the variance requests because it allows preservation of the existing single-family homes, promotes a logical lot layout, does not compromise neighborhood character, promotes homeownership opportunities, and because the request complies with a majority of the review criteria (see attached Planning Commission staff report).

Proposed Plat

The subdivision plat will result in two lots described as follows:

- 1) The northern Lot 1 located at 2816 Benton Street is proposed to be 7,829 square feet in size and 53.36' wide to contain the 1,220 square foot single-family home and carriage house.

- 2) The southern Lot 2 located at 2810 Benton Street is proposed to be 5,471 square feet in size and 46.64' wide to contain the other existing 650 square foot single-family home.

The central lot line has been configured to align with the existing fence line and comply with applicable setback requirements. The location of the historic carriage house has driven two angle points in the new lot line to ensure that the carriage house meets the 5' side setback requirement of R-3 zoning.

No public improvements will be required because the frontage along Benton Street includes curb, gutter, and a 5-foot attached sidewalk, and meets the City's minimum standards for local streets. All grading and drainage on the site is existing and is not proposed to change.

Standard utility easements are provided in the form of an 8' utility easement along the rear (east) lot line. The alley along the rear of the properties has historically been used for public access but is not dedicated right-of-way. The prescriptive use is being formalized by this plat as a public alley access, maintenance, and utility easement.

RECOMMENDATIONS:

A subdivision plat is a technical document and review is a ministerial action. The plat complies with the requirements of the subdivision regulations (Article VII in Chapter 26 of the Municipal Code). For that reason, staff is recommending approval of the request.

RECOMMENDED MOTION:

Because of the variance request, a super majority vote of the members present is needed to approve the resolution.

"I move to approve Resolution No. 51-2019, a resolution approving a two-lot subdivision with variances for lot width and lot size for property zoned Residential-Three (R-3) located at 2810 and 2816 Benton street (Case No. WS-19-05 / Horton Subdivision), for the following reasons:

1. City Council has conducted a proper public hearing that meets all public notice requirements as required by Section 26-109 and 26-407 of the Code of Laws.
2. The requested subdivision has been reviewed by the Planning Commission, which has forwarded its recommendation of approval.
3. The subdivision plat has been found in compliance with Article IV of Chapter 26 of the Code of Laws.
4. All agencies can provide services to the property with improvements installed at the developer's expense.
5. The variance request is in compliance with a majority of the review criteria.

Or,

"I move to deny Resolution No. 51-2019, a resolution approving a two-lot subdivision with variances for lot width and lot size for property zoned Residential-Three (R-3) located at 2810 and 2816 Benton street (Case No. WS-19-05 / Horton Subdivision), for the following reasons:

- 1.
- 2.
- 3.

and direct the City Attorney to prepare a Resolution of Denial, to be scheduled for Council consideration at the next available regular business meeting.”

REPORT PREPARED/REVIEWED BY:

Stephanie Stevens, Senior Planner

Lauren Mikulak, Planning Manager

Kenneth Johnstone, Community Development Director

Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 51-2019
2. Planning Commission Staff Report
3. Planning Commission Draft Meeting Minutes

**CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 51
SERIES OF 2019**

TITLE: A RESOLUTION APPROVING A TWO-LOT SUBDIVISION WITH VARIANCES FOR LOT WIDTH AND LOT SIZE FOR PROPERTY ZONED RESIDENTIAL-THREE (R-3) LOCATED AT 2810 AND 2816 BENTON STREET (CASE NO. WS-19-05 / HORTON SUBDIVISION)

WHEREAS, Chapter 26, Article IV of the Wheat Ridge Code of Laws establishes procedures for the City's review and approval of Subdivision Plats; and,

WHEREAS, an application for a two-lot subdivision with variances for lot width and lot size was received from Terrance Horton to re-subdivide Lots 22 through 25, inclusive, Block 2, Resubdivision of Blocks 1 to 7 and the north ½ of Block 8, Lakeside Subdivision in the Residential-Three zone district; and,

WHEREAS, all referral agencies have reviewed the request and do not have concerns; and,

WHEREAS, all requirements of the zoning code and Subdivision Regulations have been met; and,

WHEREAS, the variance request is in compliance with a majority of the criteria for review; and,

WHEREAS, the City Council has conducted a public hearing complying with all public notice requirements as required by Section 26-109 of the Code of Laws.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

A TWO-LOT SUBDIVISION WITH VARIANCES FOR LOT WIDTH AND LOT SIZE FOR PROPERTY ZONED RESIDENTIAL-THREE (R-3) LOCATED AT 2810 AND 2816 BENTON STREET (CASE NO. WS-19-05 / HORTON SUBDIVISION) IS HEREBY APPROVED FOR THE FOLLOWING REASONS:

1. City Council has conducted a proper public hearing that meets all public notice requirements as required by Section 26-109 and 26-407 of the Code of Laws.
2. The requested subdivision has been reviewed by the Planning Commission, which has forwarded its recommendation of approval.
3. The subdivision plat has been found in compliance with Article IV of Chapter 26 of the Code of Laws.
4. All agencies can provide services to the property with improvements installed at the developer's expense.

5. The variance request is in compliance with a majority of the review criteria.

DONE AND RESOLVED by the City Council this 9th day of September, 2019.

By:

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

**CITY OF WHEAT RIDGE
PLANNING DIVISION STAFF REPORT**

TO: Planning Commission **MEETING DATE:** August 15, 2019

CASE MANAGER: Stephanie Stevens

CASE NO. & NAME: WS-19-05 / Horton Subdivision

ACTION REQUESTED: Request for approval of a two-lot subdivision with variances for lot width and lot size on property zoned Residential-Three (R-3)

LOCATION OF REQUEST: 2810-2816 Benton Street

APPLICANT (S): Terrance Horton

OWNER (S): Terrance and Susan Horton

APPROXIMATE AREA: 13,300 square feet (0.30 acres)

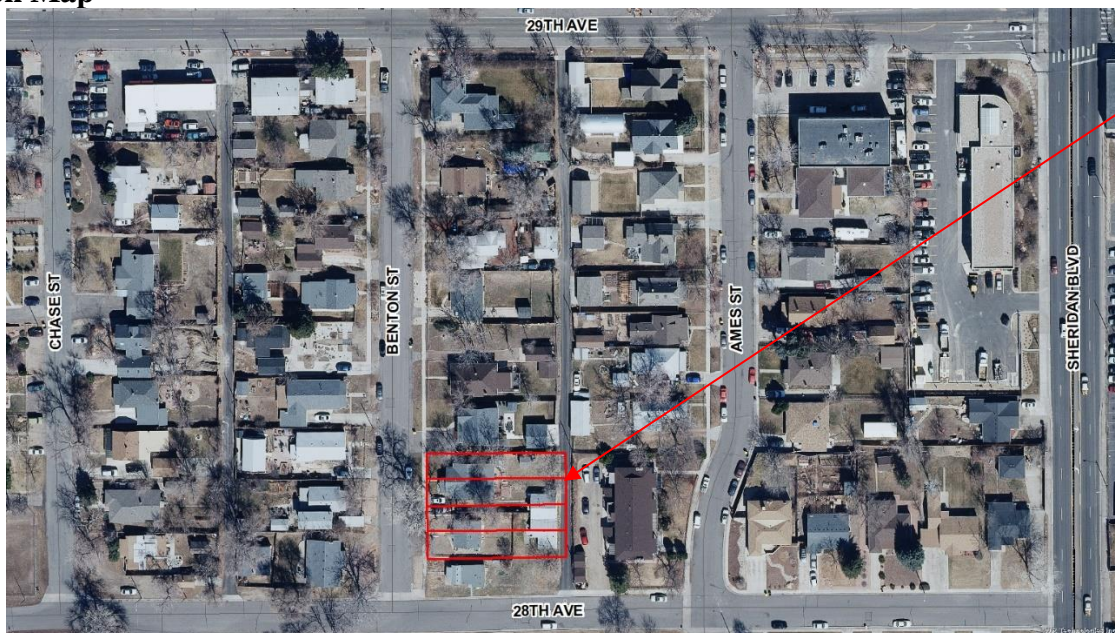
PRESENT ZONING: Residential-Three (R-3)

PRESENT LAND USE: Two single-family homes and carriage house

ENTER INTO RECORD:

(X) CASE FILE & PACKET MATERIALS	(X) SUBDIVISION REGULATIONS
(X) ZONING ORDINANCE	(X) DIGITAL PRESENTATION

Location Map



Site

JURISDICTION:

All notification and posting requirements have been met; therefore, there is jurisdiction to hear this case.

I. REQUEST

The applicant is requesting approval of a two-lot subdivision with lot width variances to allow the lots to be less than the required minimum of 60-feet in width, and a lot size variance for the southern Lot 2 to allow the lot to be less than the required minimum of 7,500 square feet in area per R-3 zoning standards. The site is currently comprised of four lots. The applicant is proposing to remove the internal lot lines and split the property into two lots. The purpose of the request is to allow for the two existing single-family homes to be contained on separate lots, with one also encompassing the carriage house which currently functions as a third dwelling unit.

Because of the need for variances, the application is being processed as a major subdivision. As such, Planning Commission will make a recommendation to City Council who is the final authority for approval.

The purpose of subdivision plat review is to confirm appropriate lot configuration, access, rights-of-way, easements, and utility service to enable future development.

II. EXISTING CONDITIONS

The properties are located just north of the 28th Avenue and Benton Street intersection, with frontage along Benton Street and alleyway access along the rear. The site is zoned Residential-Three (R-3), a zone district which provides for high quality, safe, quiet, and stable medium to high-density residential neighborhoods. See *Exhibit 1, Aerial* for a detail of these boundaries.

The subject site is surrounded by other properties with residential zoning and land uses (*Exhibit 2, Zoning*). Properties to the west, south, and east are zoned R-3 and include single-family homes, duplexes, and a multi-family residential. The properties to the north are zoned Residential-One C (R-1C) and include single-family homes.

The total size of the subject site is 13,300 square feet or 0.30 acres. It is comprised of four lots which were originally established by the Lakeside Resubdivision in 1890, and contains two single-family homes and a carriage house (*Exhibit 3, Existing Conditions*). The existing homes were built between 1917 and 1970, pre-dating the City's zoning regulations. A converted chicken coop used as a fourth dwelling unit was attached to the carriage house, but has recently been demolished. The structure was not a legal or legally nonconforming dwelling, and as such, demolition was requested by the City. The carriage house is a legally nonconforming dwelling unit and may continue to exist as such under Section 26-120 (nonconforming uses). The R-3 zone district allows up to 12 units per acre, so allowing the carriage house to continue to exist as a dwelling unit is not in violation of the density limits or at odds with current conditions on the property.

The purpose of the request is to create legal lots for the two primary single-family homes as they exist today. Because of the history of site, there are several nonconformities, but the subdivision improves and does not increase any of the nonconformities.

III. PROPOSED SUBDIVISION PLAT

Plat Document

The proposed plat document consists of two pages (*Exhibit 5, Proposed Plat – Horton Subdivision*). The first page includes a legal description of the property; signature blocks for the owners, City, surveyor and County; data tables; and standard declarations and notes. Page 2 shows all of the existing easements and right-of-way, as well as proposed lot lines being dedicated and/or established by this plat.

Lot Configuration

The subdivision plat will result in two lots described as follows:

- 1) The northern Lot 1 is proposed to be 7,829 square feet in size and 53.56' wide to contain the 1,220 square foot single-family home and carriage house.
- 2) The southern Lot 2 which is proposed to be 5,471 square feet in size and 46.64' wide to contain the other existing 650 square foot single-family home.

The central lot line has been configured to align with the existing fence line and comply with applicable setback requirements. The location of the historic carriage house has driven two angle points in the new lot line to ensure that the carriage house meets the 5' side setback requirement of R-3 zoning.

Public Improvements

The frontage along Benton Street includes curb, gutter, and a 5-foot attached sidewalk, and meets the City's minimum standards for local streets. No public improvements will be required.

Drainage

All grading and drainage on the site is existing and is not proposed to change.

Easements and Notes

Standard utility easements are provided in the form of an 8' utility easement along the rear (east) lot line. The alley along the rear of the properties has historically been used for public access and is being formalized by this plat as a public alley access, maintenance, and utility easement.

IV. VARIANCE REQUEST

As mentioned above, lot width variances are being requested to allow the lots to be less than the required minimum of 60-feet in width, and a lot size variance is requested for the southern Lot 2 to allow the lot to be less than the required minimum of 7,500 square feet in area per R-3 zoning standards as shown in the table below. The dimensions that are subject to the variance requests are identified in bold.

	Minimum standard for single-family in R-3	Provided for Lot 1	Provided for Lot 2
Lot Area	7,500 square feet	7,829 square feet	5,471 square feet
Lot Width	60 feet	53.36'	46.64'

Lot 1 is proposed to be larger because of the current configuration of the existing single-family homes, the need to meet minimum setbacks, as well as the need to maintain minimum size requirements for

the lot which also encompasses the carriage house. Because the single-family home and carriage house pre-date the City's zoning regulations, the carriage house is considered a legally nonconforming dwelling unit and may continue to exist as such under Section 26-120 (nonconforming uses). Lot 1 complies with the R-3 density limitation (12 units/acre) but the new lot configuration would not allow development of a duplex in the future. Additionally, if the carriage unit is ever intentionally demolished, it would not be allowed to be rebuilt.

Section 26-115.C.4 of the municipal code provides subdivision variance criteria for review. The Planning Commission and City Council shall base their decision on the variance request in consideration of the extent to which the request meets a majority of these criteria. Staff provides the following review and analysis.

1. The property in question would not yield a reasonable return in use, service or income if permitted to be used only under the conditions allowed by regulation for the district in which it is located.

If the request were denied, the property would continue to yield a reasonable – albeit reduced – return in use. The property could continue to function as two single-family residences and a carriage house regardless of the outcome of the variance request, but the homes would not be able to be sold separately. The current configuration is in conflict with R-3 zoning, but is allowed because it pre-dates the City's zoning regulations.

Staff finds this criterion has not been met.

2. The variance would not alter the essential character of the locality.

The requested lot width and lot size variances are not expected to alter the character of the locality as the land use is not anticipated to change. The R-3 zone district allows for single-family homes, duplexes, and multi-family residential developments at a maximum density of 12 dwelling units per acre. Surrounding uses include primarily single-family homes, with a few duplexes and multi-family residential developments in the vicinity. The alternative option is to consolidate the property, demolish the existing buildings, and construct a 3-unit townhome building which would be allowed under R-3 zoning, but this option would be *less* consistent with the neighborhood character. The applicant has chosen to retain the existing homes to maintain compatibility.

The proposed lot sizes are consistent with lot sizes in the area and the reduced width will be imperceptible as compared with other properties in the area. There are no physical changes proposed on the property, so the request is consistent with the existing character. The proposed configuration is consistent with the City's Comprehensive Plan, Envision Wheat Ridge, by protecting the positive attributes of the community's established neighborhoods and by promoting a homeownership opportunity.

Staff finds this criterion has been met.

3. The applicant is proposing a substantial investment in the property with this application, which would not be possible without the variance.

The applicant does not intend to make changes to the property at this time. If any new development were to be proposed on the subject site, the lots would need to be re-subdivided

because the current lot configuration would not allow for any form of development that meets zoning standards. Thus, substantial investment would not be possible without either consolidating the lots or proceeding with a variance. The variance is preferred because it results in a more compatible outcome, but an alternative option does exist.

Staff finds this criterion has not been met.

- 4. The particular physical surrounding, shape or topographical condition of the specific property involved results in a particular and unique hardship (upon the owner) as distinguished from a mere inconvenience if the strict letter of the regulations were carried out.**

The shape and size of the property in combination with the location of the existing homes present a unique hardship. The lots are undersized and homes currently cross lot lines, but the size of the property in total makes it impossible to subdivide into more than one lot while meeting zoning regulations. The current lot configuration consists of four lots that are 25' wide and 3,325 square foot in size each. The proposed configuration would allow the owner to retain the existing homes while providing for more orderly subdivision of land by meeting a majority of the development standards of the zone district, including density, setbacks, and size requirements of Lot 1, and formalizing variances as needed.

Staff finds this criterion has been met.

- 5. The alleged difficulty or hardship has not been created by any person presently having an interest in the property.**

The hardship described above was not created by the applicant or any person currently having interest in the property. The current owner purchased the property in 1997, long after the site was platted and the existing homes were built.

Staff finds this criterion has been met.

- 6. The granting of the variance would not be detrimental to the public welfare or injurious to other property or improvements in the neighborhood in which the property is located, by, among other things, substantially or permanently impairing the appropriate use or development of adjacent property, impairing the adequate supply of light and air to adjacent property, substantially increasing the congestion in public streets or increasing the danger of fire or endangering the public safety, or substantially diminishing or impairing property values within the neighborhood.**

Because the site is being retained for its historic use, the request would not be detrimental to public welfare and is not expected to injure neighboring property or improvements. It would not hinder or impair the development of the adjacent properties. The adequate supply of air and light would not be compromised as a result of this request. Even if redevelopment were to be sought at a later date, the proposed lot configuration would only allow for single-family homes to be developed. The request would therefore not increase the congestion in the streets or increase danger of fire or endanger public safety.

Staff finds this criterion has been met.

7. The unusual circumstances or conditions necessitating the variance request are present in the neighborhood and are not unique to the property.

Lakeside Resubdivision was established in 1890 and is bounded by Fenton Street to the west, Sheridan Boulevard to the east, 29th Avenue to the north, and 28th Avenue to the south. All lots within the confines of the Lakeside Resubdivision are substandard at 25 feet in width, so this condition is not unique to the property.

Staff finds this criterion has been met.

8. Granting of the variance would result in a reasonable accommodation of a person with disabilities.

Single-family homes and their accessory buildings are not required to meet building codes pertaining to the accommodation of persons with disabilities.

Staff finds this criterion is not applicable.

9. The application is in substantial compliance with the applicable standards set forth in the Architectural and Site Design Manual.

The Architectural and Site Design Manual does not apply to single- and two-family dwelling units.

Staff finds this criterion is not applicable.

V. AGENCY REFERRALS

All affected service agencies were contacted for comment on the subdivision plat regarding the ability to serve the property. The developer will be responsible for any needed upgrades to accommodate the proposed development. Specific referral responses follow.

City of Wheat Ridge Public Works: The plat and supporting technical documents have been reviewed and approved.

City of Wheat Ridge Building Division: No objections to the proposed subdivision.

Wheat Ridge Sanitation District: No objections to the proposed subdivision. Noted requirements for providing separate service lines, and applicant has demonstrated that this requirements has been met.

West Metro Fire Protection District No objections to the proposed subdivision.

Xcel Energy: A utility easement is provided to accommodate existing utilities.

No comments were received from Wheat Ridge Water District, Comcast, or Century Link. Referral recipients are advised that no comment received indicates having no objections or concerns regarding the proposal.

V. STAFF CONCLUSIONS AND RECOMMENDATIONS

Staff concludes that the proposed subdivision plat with variances to lot size and lot width results in a logical lot layout for the proposed future development. Staff further concludes that the subdivision plat complies with the standards in Article IV of the zoning and development code (subdivision regulations) and that all utility agencies can serve the property with improvements installed at the developer's expense. For these reasons, staff recommends approval of the subdivision plat.

VI. SUGGESTED MOTIONS

VARIANCE

A motion on the variance must occur prior to a motion of the subdivision plat; for all variance requests, a super majority of the members present is needed to recommend approval of the variance.

Option A: "I move to recommend APPROVAL of a 5.4-foot variance from the lot width requirement for Lot 1, and a 13.36-foot variance from lot width and 2,029 square foot variance from the lot size requirement for Lot 2 to allow two single-family lots zoned Residential-Three (R-3), for the following reasons:

1. The application is in compliance with the review criteria.
2. The variance would not alter the essential character of the locality.
3. The proposed configuration is consistent with the Comprehensive Plan and other policy documents supported by the city by protecting the positive attributes of the community's established neighborhoods and promoting home ownership opportunities.
4. Special conditions exist which result in a particular and unique hardship.
5. The proposed lot layout is logical and enables the site to be retained for its historic use.
6. The request would not be detrimental to public safety or welfare.

Option B: "I move to recommend DENIAL of a 5.4-foot variance from the lot width requirement for Lot 1, and a 13.36-foot variance from lot width and 2,029 square foot variance from the lot size requirement for Lot 2 to allow two single-family lots zoned Residential-Three (R-3), for the following reasons:

- 1.
2. ..."

SUBDIVISION

Option A: "I move to recommend APPROVAL of Case No. WS-19-05, a request for approval of a two-lot subdivision plat on property zoned Residential-Three (R-3) and located at 2810 and 2816 Benton Street, for the following reasons:

1. All agencies can provide services to the property with improvements installed at the developer's expense.
2. The requirements of Article IV of the zoning and development code have been met.

Option B: "I move to recommend DENIAL of Case No. WS-19-05, a request for approval of a two-lot subdivision plat on property zoned Residential-Three (R-3) and located at 2810 and 2816 Benton Street, for the following reasons:

- 1.
2. ..."

EXHIBIT 1: AERIAL



The subject property is outlined in red. This 2018 aerial shows the recently demolished converted chicken coop that was attached to the carriage house located along the rear (east side) of the property.

EXHIBIT 2: ZONING

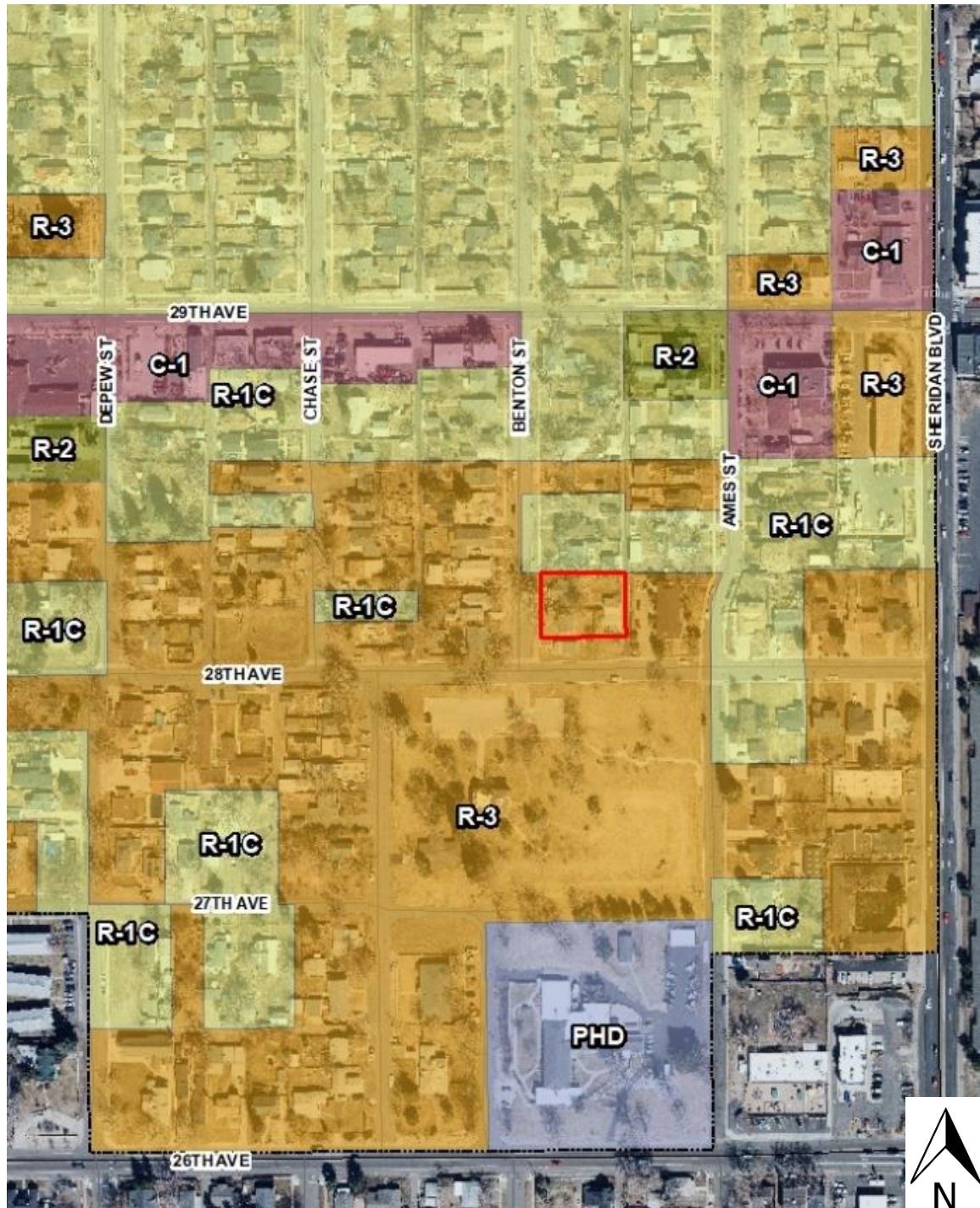
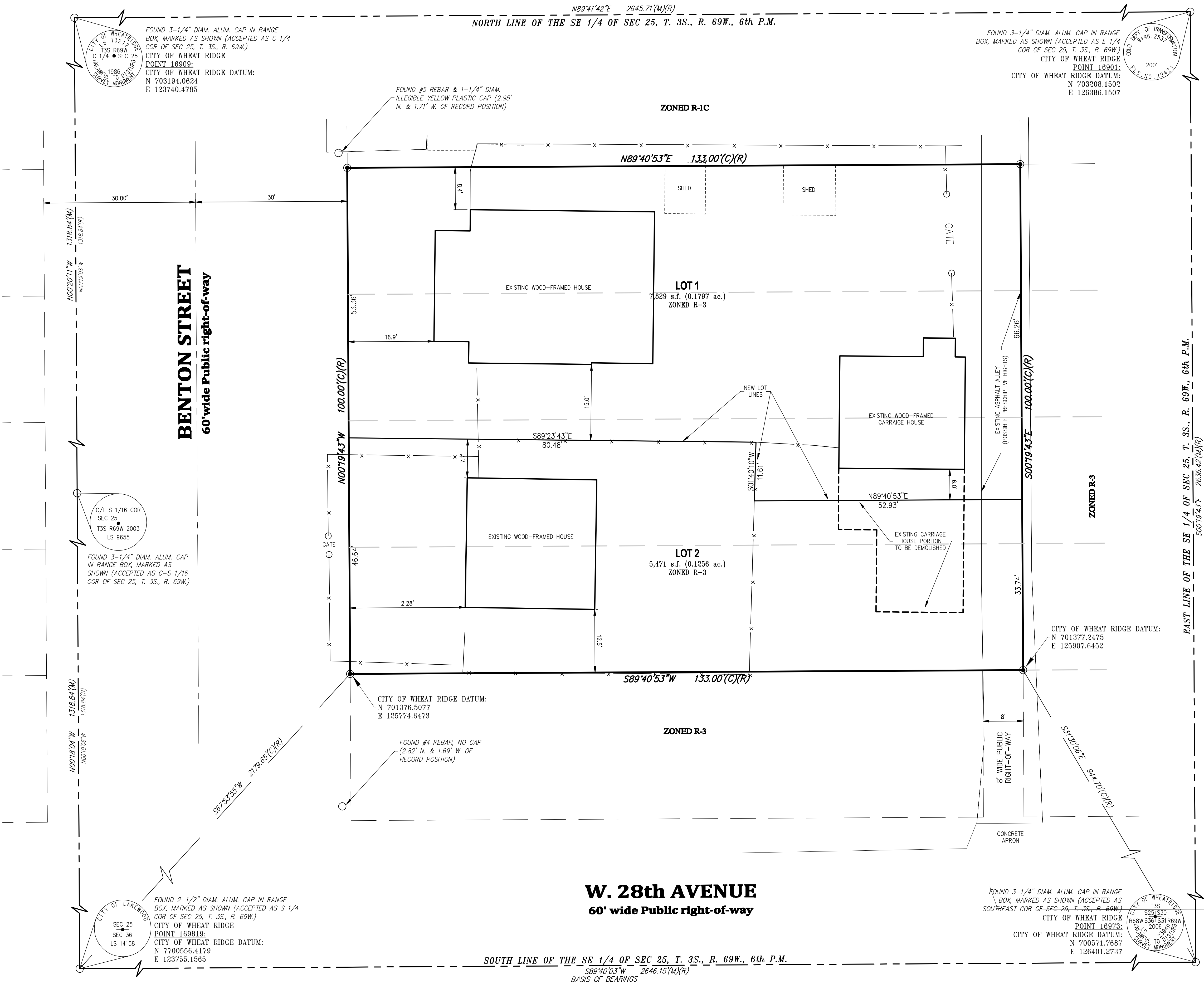


EXHIBIT 3: EXISTING CONDITIONS

[see attached]

HORTON SUBDIVISION - FILING No. 1 (EXISTING CONDITIONS PLAN)

A REPLAT OF LOTS 22 THROUGH 25 INCLUSIVE OF BLOCK 2 OF RESUBDIVISION OF BLOCKS 1 TO 7, LAKESIDE, LYING WITHIN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WHEAT RIDGE, COUNTY OF JEFFERSON, STATE OF COLORADO

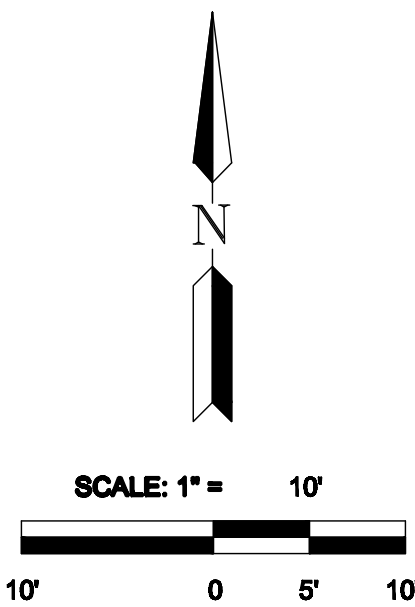


LEGEND OF SYMBOLS & ABBREVIATIONS

- MONUMENT FOUND, AS NOTED
- SET REBAR & 1-1/2" DIAMETER YELLOW PLASTIC CAP, PLS 37929, TYPICAL UNLESS NOTED OTHERWISE
- (C) CALCULATED
- (M) MEASURED
- 16 LOT NUMBER
- (R) RECORD
- EXISTING RECORD EASEMENT LINE
- - - NEW EASEMENT GRANTED BY THIS PLAT (DIMENSIONED IN [] BRACKETS)
- NEW LOT LINE HEREBY CREATED BY THIS PLAT
- ADJOINING PARCEL OR LOT LINE
- CENTER LINE
- PUBLIC LANDS SURVEY SECTION LINE
- PLAT BOUNDARY LIMITS

LOT DATA TABLE

LOT No.	SQ. FT.	ACREAGE
1	7,829 s.f.	0.1797 ac.
2	5,471 s.f.	0.1256 ac.
TOTAL	13,300 s.f.	0.3053 ac.



POWERTM
Surveying Company, Inc.
Established 1948
720 W. 84TH AVENUE, UNIT 240
THORNTON, COLORADO 80261
PH: 303-702-1817
FAX: 303-702-1488
www.powersurveying.com

TYPE OF SUBMITTAL:	EXIST. CONDITIONS PLAN
PREPARATION DATE:	APRIL 21, 2019
REVISION DATE:	
REVISION DATE:	
JOB NO. 501-19-083	501-19-083.dwg

SHEET 1 OF 1

EXHIBIT 4: VARIANCE REQUEST

[see attached]

August 5, 2019

City of Wheat Ridge
Planning Division

SUBJECT: Variance Letter
Case Number WS-19-05 / Horton Subdivision
2810-2916 Benton Street
Wheat Ridge, CO 80214

To Whom It May Concern:

I believe we are meeting the criteria in Section 26-115.C.4 because most conditions are already existing, and we are not changing anything except adding fencing along the new property lines.

The only thing we are asking is to change the interior lot lines so that we can separate the home and the rear carriage house on 2816 from the 2810 property while maintaining the 5' setback around the carriage house.

There is currently a full fence on the north side of the property and a partial fence on the south side which will be extended to the alley.

Separating the houses with a fence along the new property line and creating the potential to sell one of the single-family homes will not increase the number of residents able to comfortably live there nor increase cars or traffic.

Sincerely,
Terry L Horton
303-515-0808
Owner

EXHIBIT 5: PROPOSED PLAT- HORTON SUBDIVISION

[see attached]

HORTON SUBDIVISION - FILING NO. 1

A REPLAT OF LOTS 22 THROUGH 25 INCLUSIVE OF BLOCK 2 OF RESUBDIVISION OF BLOCKS 1 TO 7 AND THE NORTH HALF OF BLOCK 8, LAKESIDE, LYING WITHIN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WHEAT RIDGE, COUNTY OF JEFFERSON, STATE OF COLORADO

OWNER'S CERTIFICATE

WE, TERRANCE L. HORTON AND SUSAN HORTON, BEING THE OWNERS OF REAL PROPERTY CONTAINING 0.4660 ACRES DESCRIBED AS FOLLOWS:

ALL OF LOTS 22, 23, 24 AND 25, INCLUSIVE, BLOCK 2, RESUBDIVISION OF BLOCKS 1 TO 7 AND THE NORTH 1/2 OF BLOCK 8, LAKESIDE, COUNTY OF JEFFERSON, STATE OF COLORADO, LYING WITHIN THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE 6TH PRINCIPAL MERIDIAN, COUNTY OF JEFFERSON, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SOUTHEAST QUARTER (SE 1/4), FROM WHENCE THE SOUTHWEST CORNER OF SAID SOUTHEAST QUARTER (SE 1/4) BEARS SOUTH 89°40'03" WEST A DISTANCE OF 2646.15 FEET, WITH ALL BEARINGS HEREIN RELATED THERETO; THENCE NORTH 31°30'06" WEST, 944.70 FEET TO THE SOUTHEAST CORNER OF SAID LOT 22, AND BEING THE POINT OF BEGINNING;

THENCE ALONG THE SOUTH LINE OF SAID LOT 22, SOUTH 89°40'53" WEST, 133.00 FEET TO THE SOUTHWEST CORNER OF SAID LOT 22, AND ALSO BEING ON THE WEST LINE OF SAID BLOCK 2; THENCE ALONG SAID WEST LINE, NORTH 00°19'43" WEST, 100.00 FEET TO THE NORTHWEST CORNER OF SAID LOT 25; THENCE LEAVING SAID WEST LINE OF SAID BLOCK 2, ALONG THE NORTH LINE OF SAID LOT 25, NORTH 89°40'53" EAST, 133.00 FEET TO THE NORTHEAST CORNER OF SAID LOT 25; THENCE ALONG THE EAST LINE OF SAID LOTS 25, 24, 23 AND 22 INCLUSIVE, SOUTH 00°19'43" EAST, 100.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 13,300 SQUARE FEET OR 0.3053 ACRES OF LAND, MORE OR LESS.

HAVE LAID OUT, SUBDIVIDED AND PLATTED SAID LAND AS PER THE DRAWING HEREON CONTAINED UNDER THE NAME AND STYLE OF "HORTON SUBDIVISION - FILING No. 1", A SUBDIVISION OF A PART OF THE CITY OF WHEAT RIDGE, COLORADO AND BY THESE PRESENTS DO DEDICATE TO THE CITY OF WHEAT RIDGE AND THE PUBLIC THOSE PORTIONS OF REAL PROPERTY SHOWN AS RIGHT-OF-WAY, AND DO FURTHER DEDICATE TO THE CITY OF WHEAT RIDGE AND THOSE MUNICIPALLY OWNED AND/OR MUNICIPALLY FRANCHISED UTILITIES AND SERVICES THOSE PORTIONS OF REAL PROPERTY SHOWN AS EASEMENTS FOR THE CONSTRUCTION, INSTALLATION, OPERATION, MAINTENANCE, REPAIR AND REPLACEMENT FOR ALL SERVICES. THIS INCLUDES BUT IS NOT LIMITED TO TELEPHONE AND ELECTRIC LINES, GAS LINES, WATER AND SANITARY SEWER LINES, HYDRANTS, STORM WATER SYSTEMS AND PIPES, DETENTION PONDS, STREET LIGHTS AND ALL APPURTENANCES THERETO.

OWNER:

TERRANCE L. HORTON DATE

OWNER:

SUSAN HORTON DATE

NOTARY ACKNOWLEDGMENTS

STATE OF _____)
) SS.
COUNTY OF _____)

THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____, BY TERRANCE L. HORTON.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

ADDRESS OF NOTARY: _____

STATE OF _____)
) SS.
COUNTY OF _____)

THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____, BY SUSAN HORTON.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

ADDRESS OF NOTARY: _____

DEED OF TRUST HOLDER

THE UNDERSIGNED, AS LEGAL HOLDER OF THE DEED OF TRUST RECORDED ON JULY 29, 2015 AT RECEPTION NUMBER 2015079088, OF THE RECORDS OF THE JEFFERSON COUNTY COLORADO CLERK & RECORDER, HEREBY CONSENTS TO THE WITHIN PLAT.

SIGNED THIS _____ DAY OF _____, 20 ____.

FOR: MERS (MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC.)

BY: _____
PRINTED NAME AND TITLE: _____

NOTARY ACKNOWLEDGMENT

STATE OF _____)
) SS.
COUNTY OF _____)

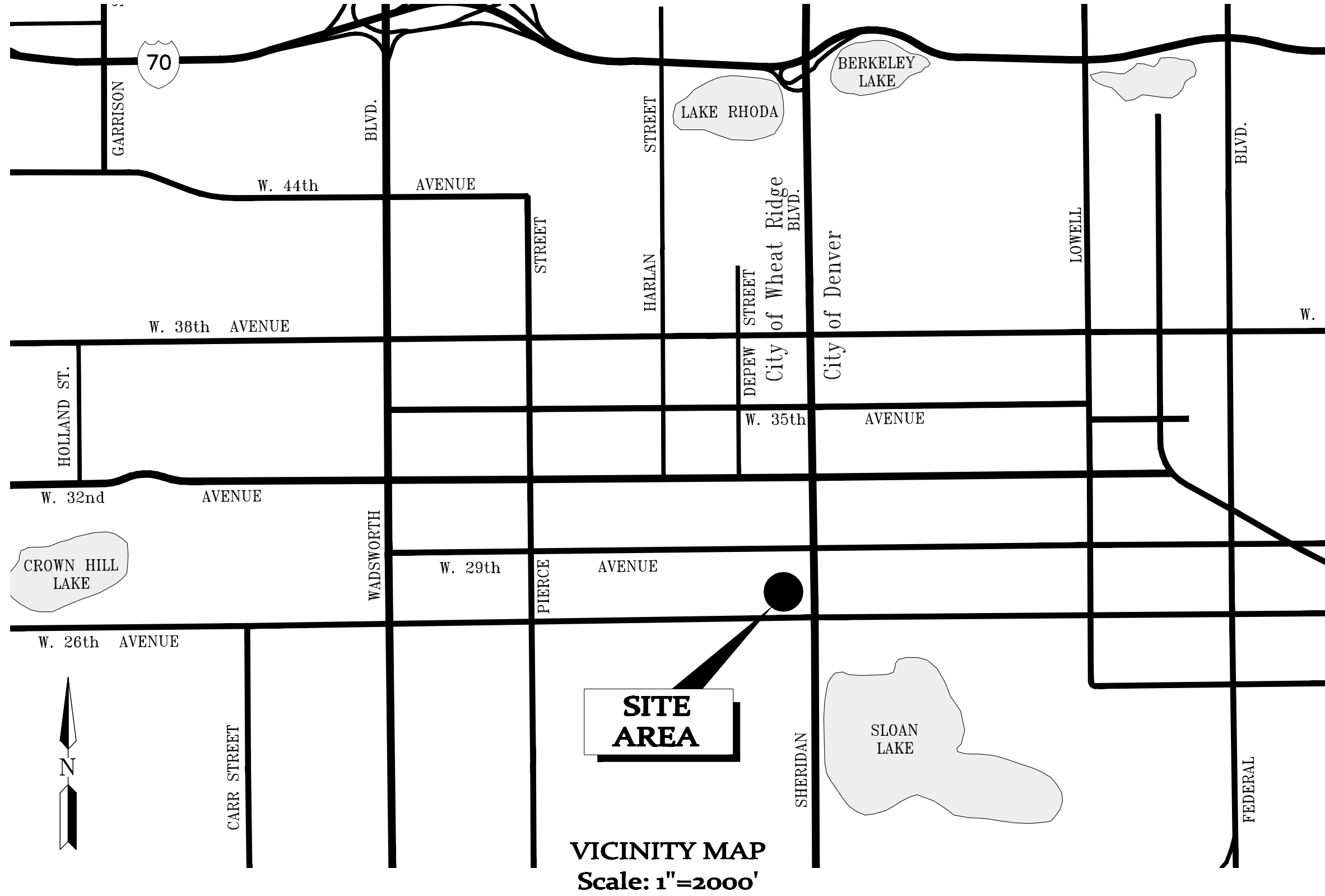
THE FOREGOING CERTIFICATE OF DEDICATION AND OWNERSHIP WAS ACKNOWLEDGED BEFORE ME THIS _____ DAY OF _____, 20____, BY _____.

NOTARY PUBLIC

MY COMMISSION EXPIRES: _____

ADDRESS OF NOTARY: _____

SHEET 1 OF 2



SHEET INDEX

- 1 COVER SHEET
- 2 MAP SHEET

PLANNING COMMISSION CERTIFICATION

RECOMMENDED FOR APPROVAL THIS _____ DAY OF _____, 20 _____, BY THE WHEAT RIDGE PLANNING COMMISSION.

CHAIRPERSON

CITY CERTIFICATION

APPROVED THIS _____ DAY OF _____, 20 _____, BY THE WHEAT RIDGE CITY COUNCIL.

ATTEST

CITY CLERK

MAYOR

COMMUNITY DEVELOPMENT DIRECTOR

DIRECTOR OF PUBLIC WORKS

BASIS OF BEARINGS

SOUTH 89°40'03" WEST, BEING THE BEARING OF THE SOUTH LINE OF THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, AS DEFINED AND MEASURED BETWEEN THE MONUMENTS FOUND AND SHOWN HEREON.

STATEMENT OF ACCURACY

THE GEODETIC POINT COORDINATE DATA SHOWN HEREIN HAS BEEN DERIVED FROM THE NAD 83 HARN STATE PLANE COLORADO CENTRAL FIPS 0502 COORDINATE SYSTEM, AND HAS A HORIZONTAL ACCURACY CLASSIFICATION OF 0.07 U.S. SURVEY FEET AT THE 95% CONFIDENCE LEVEL, AS DEFINED IN THE GEOSPATIAL POSITIONING ACCURACY STANDARDS OF THE FEDERAL GEODETIC CONTROL SUBCOMMITTEE (FGDC-STD-007.2-1998).

Case History

WS-19-05

GENERAL NOTES

1. ACCORDING TO COLORADO LAW YOU MUST COMMENCE ANY LEGAL ACTION BASED UPON ANY DEFECT IN THIS SURVEY WITHIN THREE YEARS AFTER YOU FIRST DISCOVER SUCH DEFECT. IN NO EVENT, MAY ANY ACTION BASED UPON ANY DEFECT IN THIS SURVEY BE COMMENCED MORE THAN TEN YEARS FROM THE DATE OF THE CERTIFICATION SHOWN HEREON.

2. THIS SURVEY DOES NOT CONSTITUTE A TITLE SEARCH BY POWER SURVEYING CO., INC. FOR INFORMATION REGARDING BOUNDARY, EASEMENTS AND TITLE, POWER SURVEYING CO., INC. RELIED UPON THE FOLLOWING TITLE COMMITMENT ISSUED BY FIDELITY NATIONAL TITLE COMPANY:

COMMITMENT No. F0632967-122-LF, WITH AN EFFECTIVE DATE OF MARCH 12, 2019.

3. FLOOD ZONE DESIGNATION: THE SUBJECT PROPERTY LIES ENTIRELY WITHIN ZONE X (AREAS DETERMINED TO BE OUTSIDE THE 0.2% PERCENT ANNUAL CHANCE FLOODPLAIN), AS SHOWN ON FEMA F.I.R.M. MAP #08059 C 0218F, WITH AN EFFECTIVE DATE OF FEBRUARY 5, 2014.

4. FIELD SURVEY COMPLETION DATE: APRIL 12, 2019.

5. THE SUBJECT PROPERTY CONTAINS ±13,300 TOTAL SQUARE FEET OR ±0.3053 ACRES OF LAND.

6. ALL DISTANCES FOR THIS PLAT ARE SHOWN USING (GROUND) MODIFIED STATE PLANE MEASUREMENTS (U.S. SURVEY FEET ROUNDED TO THE NEAREST 0.01') CONSISTENT WITH THE CURRENT CITY DATUM.

- a. THE CURRENT CITY DATUM COORDINATE SYSTEM USED IS A GROUND-BASED MODIFIED FORM OF THE NAD83/92 STATE PLANE COORDINATE SYSTEM, COLORADO CENTRAL ZONE 0502.
- b. VERTICAL DATUM USED IS THE NORTH AMERICAN VERTICAL DATUM OF 1988 (NAVD88).
- c. GROUND TO GRID COMBINED SCALE FACTOR IS 0.99974780300, SCALED FROM BASE POINT PHAC1 (PERMANENT HIGH ACCURACY CONTROL POINT #1) HAVING THE FOLLOWING NAD83/92 STATE PLANE COORDINATES: PHAC1:NORTHING: 1701258.75, EASTING: 3118217.58, ELEVATION: 5471.62 FEET

7. UTILITY EASEMENTS: EASEMENTS ARE HEREBY GRANTED ON PRIVATE PROPERTY AS SHOWN ON THE PLAT. THESE EASEMENTS ARE DEDICATED FOR THE INSTALLATION, MAINTENANCE, AND REPLACEMENT OF ELECTRIC, GAS, TELEVISION CABLE, DRAINAGE AND TELECOMMUNICATIONS FACILITIES. PERMANENT STRUCTURES AND WATER METERS SHALL NOT BE PERMITTED WITHIN SAID UTILITY EASEMENTS.

8. THE OWNER AND HIS SUCCESSORS AND ASSIGNS HEREBY GRANTS LIMITED RIGHTS AND PRIVILEGES TO ACCESS AND TO FREE MOVEMENT THROUGH THOSE AREAS INDICATED AS "EMERGENCY ACCESS, PRIVATE ACCESS AND UTILITY EASEMENT" AS SHOWN ON THIS PLAT. SUCH GRANT OF EASEMENT SHALL BE LIMITED TO THE OWNERS, TENANTS, CUSTOMERS AND GUESTS OF THE OWNERS AND SHALL FURTHERMORE GRANT EMERGENCY VEHICULAR ACCESS AND THE PLACEMENT AND MAINTENANCE OF UTILITIES.

9. VARIANCES FOR LOT WIDTH AND LOT AREA PER R-3 ZONING STANDARDS HAVE BEEN REQUESTED.

10. PUBLIC ALLEY ACCESS, MAINTENANCE, AND UTILITY EASEMENT: THE OWNER(S), SUCCESSORS, AND ASSIGNS HEREBY GRANTS FREE MOVEMENT AND PUBLIC VEHICULAR, PEDESTRIAN, AND EMERGENCY ACCESS TO AND THROUGH THOSE AREAS INDICATED AS "PUBLIC ALLEY EASEMENT", AS ILLUSTRATED ON THIS PLAT. MAINTENANCE OF THE ROADWAY AND ITS APPURTENANCES, INCLUDING STORMWATER DRAINAGE, WITHIN THE PUBLIC ALLEY EASEMENT SHALL BE THE RESPONSIBILITY OF THE CITY OF WHEAT RIDGE ("CITY"). UTILITIES LYING WITHIN OR ACROSS SAID PUBLIC ALLEY EASEMENT SHALL REMAIN THE SOLE RESPONSIBILITY OF THE INDIVIDUAL DISTRICT TO WHICH THE UTILITY BELONGS, OR AS STATED IN CHAPTER 15, "UTILITIES AND FRANCHISES OF THE CITY MUNICIPAL CODE OF LAWS."

SURVEYOR'S NOTE

"PER COLORADO REVISED STATUTES SEC. 38-51-106 (L), ALL LINEAL UNITS DEPICTED ON THIS LAND SURVEY PLAT ARE U.S. SURVEY FEET. ONE METER EQUALS 39.37 DIVIDED BY 12 U.S. SURVEY FEET ACCORDING TO THE NATIONAL INSTITUTE OF STANDARDS AND TECHNOLOGY."

SURVEYOR'S CERTIFICATE

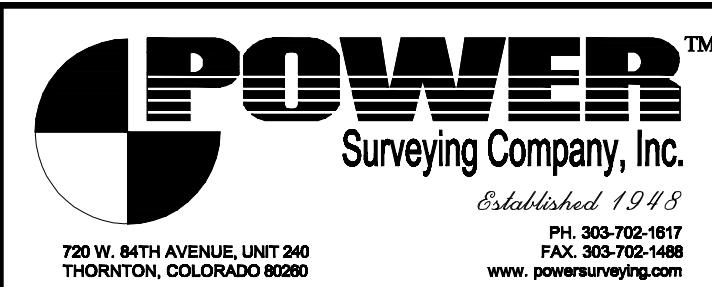
I, RICHARD B. GABRIEL, DO HEREBY CERTIFY THAT THE SURVEY OF THE BOUNDARY OF "HORTON SUBDIVISION - FILING No. 1" WAS MADE BY ME OR UNDER MY DIRECT SUPERVISION AND TO THE BEST OF MY KNOWLEDGE, INFORMATION AND BELIEF, IN ACCORDANCE WITH ALL APPLICABLE COLORADO STATUTES, CURRENT REVISED EDITION AS AMENDED, THE ACCOMPANYING PLAT ACCURATELY REPRESENTS SAID SURVEY.

RICHARD B. GABRIEL, P.L.S.
COLORADO LICENSE NO. 37929
FOR AND ON BEHALF OF POWER SURVEYING COMPANY, INC.
720 W. 84TH AVENUE, UNIT 240
THORNTON, CO 80260
(303) 702-1617
www.powersurveyng.com

COUNTY CLERK AND RECORDER'S CERTIFICATE

ACCEPTED FOR RECORDING IN THE OFFICE OF THE COUNTY CLERK AND RECORDER OF JEFFERSON COUNTY AT GOLDEN, COLORADO THIS _____ DAY OF _____, 20 _____.
JEFFERSON COUNTY CLERK AND RECORDER

BY: _____
DEPUTY CLERK

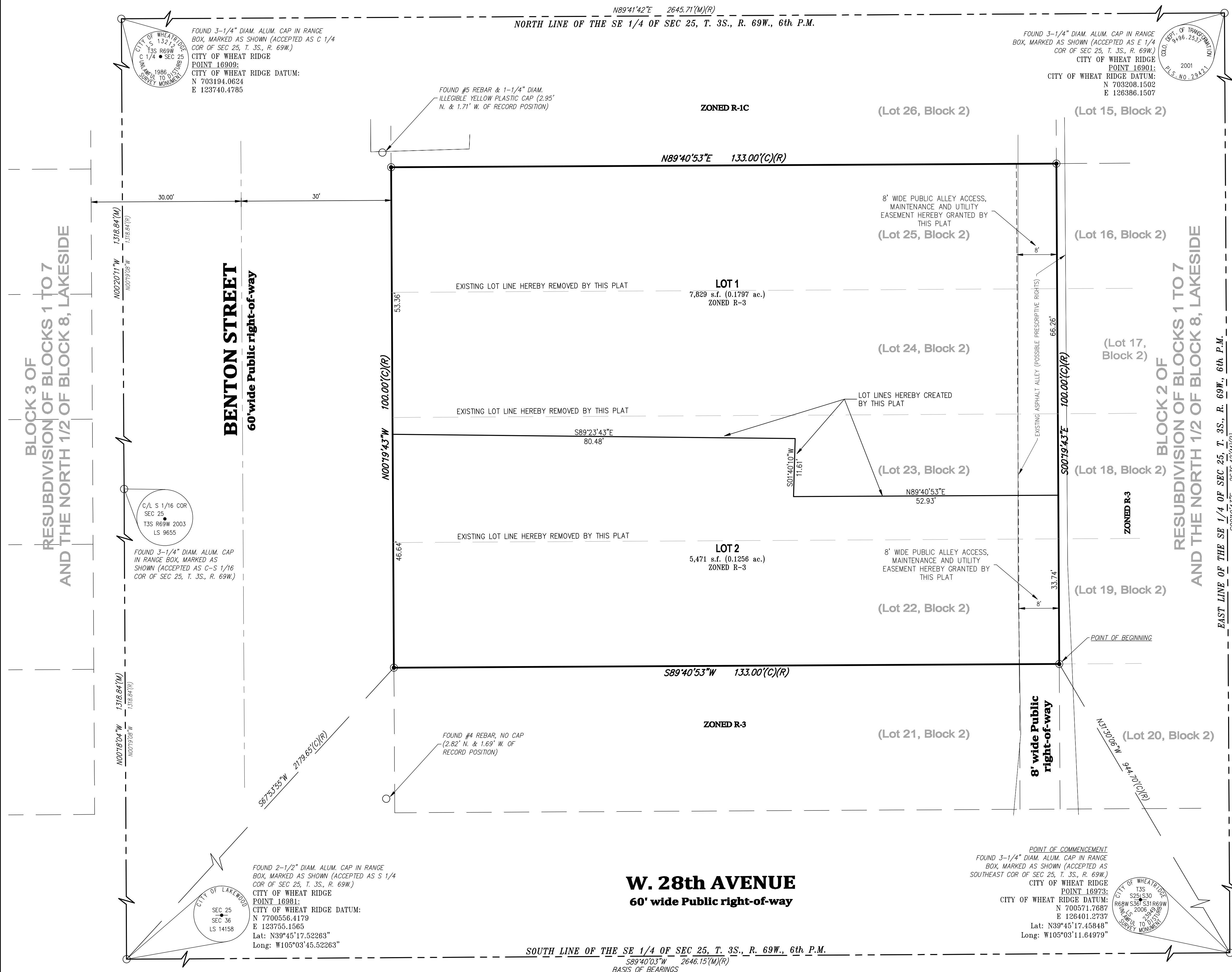


TYPE OF SUBMITTAL:	MAJOR SUBD. PLAT
PREPARATION DATE:	APRIL 21, 2019
REVISION DATE:	JULY 22, 2019
REVISION DATE:	
REVISION DATE:	
JOB NO. 501-19-083	501-19-083.dwg

SHEET 1 OF 2

A REPLAT OF LOTS 22 THROUGH 25 INCLUSIVE OF BLOCK 2 OF RESUBDIVISION OF BLOCKS 1 TO 7 AND THE NORTH HALF OF BLOCK 8, LAKESIDE, LYING WITHIN THE SOUTHEAST QUARTER (SE 1/4) OF SECTION 25, TOWNSHIP 3 SOUTH, RANGE 69 WEST OF THE SIXTH PRINCIPAL MERIDIAN, CITY OF WHEAT RIDGE, COUNTY OF JEFFERSON, STATE OF COLORADO

SHEET 2 OF 2

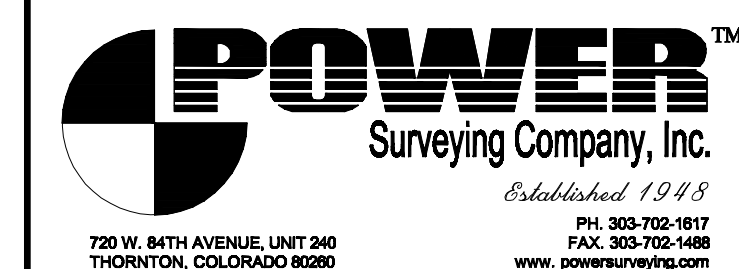
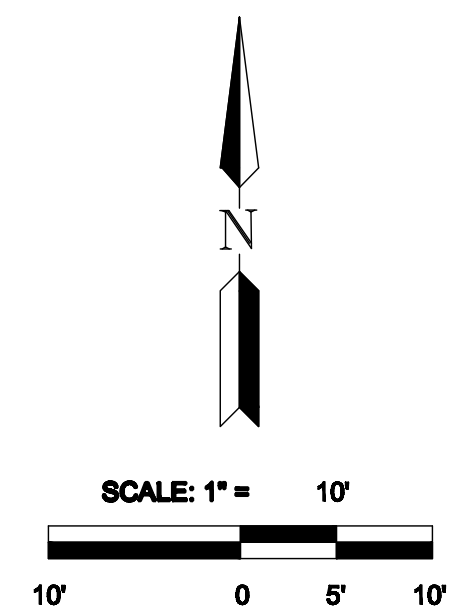


LEGEND OF SYMBOLS & ABBREVIATIONS

- MONUMENT FOUND, AS NOTED
- SET REBAR & 1-1/2" DIAMETER YELLOW PLASTIC CAP, PLS 37929, TYPICAL UNLESS NOTED OTHERWISE
- (C) CALCULATED
- (M) MEASURED
- 16** LOT NUMBER
- (R) RECORD
- EXISTING RECORD EASEMENT LINE
- NEW EASEMENT LINE (DIMENSIONED IN BRACKETS [])
- ——— EXISTING PLATTED LOT LINE
- NEW LOT LINE HEREBY CREATED BY THIS PLAT
- ——— ADJOINING PARCEL OR LOT LINE
- ——— CENTER LINE
- ——— PUBLIC LANDS SURVEY SECTION LINE
- PLAT BOUNDARY LIMITS

LOT DATA TABLE

LOT No.	SQ. FT.	ACREAGE
1	7,829 s.f.	0.1797 ac.
2	5,471 s.f.	0.1256 ac.
TOTAL	13,300 s.f.	0.3053 ac.



TYPE OF SUBMITTAL:	MAJOR SUBD. PLAT
PREPARATION DATE:	APRIL 21, 2019
REVISION DATE:	JULY 22, 2019
REVISION DATE:	
REVISION DATE:	
JOB NO. 501-19-083	501-19-083.dwg
SHEET 2 OF 2	

2. The applicant will execute a license agreement with the Department of Public Works for the wayfinding signs to be installed in the public right-of-way.
3. Property and building dimensions shall be updated on Page 3 of the Master Sign Plan with a disclaimer that sign locations are illustrative (not exact locations) and not to scale.
4. Text on Page 9 of the Master Sign Plan shall be added stating signs located in the sight triangle shall be approved by Public Works and, the sign height will be revised to state “up to 60 inches”.

Motion approved 5-1 with Commissioner PETERSON voting against.

- B. **Case No. WS-19-05:** an application filed by Terrance Horton for approval of a two-lot subdivision with variances for lot width and lot size on property zoned Residential-Three (R-3).

Ms. Stevens gave a short presentation regarding the Subdivision, variances and the application. She entered into the record the contents of the case file, packet materials, the subdivision regulations, and the contents of the digital presentation. She stated the public notice and posting requirements have been met, therefore the Planning Commission has jurisdiction to hear this case.

Commissioner ANTOL asked if the subdivision and variances are approved by City Council then there will be one conforming lot and one legally nonconforming lot in regards to lot size.

Ms. Stevens confirmed that to be true and both lots will be sellable lots in the future.

Commissioner ANTOL asked if there are similar lot sizes in this neighborhood.

Ms. Stevens said there are multiple 25 foot lot widths in the neighborhood and the setbacks are accounted for.

Commissioner LARSON asked what the special conditions are in #4 of the motion.

Ms. Stevens explained the lot is substandard and undersized and because the buildings were built over the lot lines then this created special conditions by a unique hardship.

Ms. Mikulak added that the Planning Commission does not see many variance request because staff says no to 90% of those requests. Planning Commission is obligated to review this case when it is associated with another application and if there is a true physical hardship then the question is asked of why should all the other rules in the City apply to everyone else but the applicant, hence the special condition that was explained by Ms. Stevens.

Commissioner KERNS asked about the property line extending into the alley.

Ms. Stevens explained that it is a formal access easement and cannot be built on.

Ms. Mikulak added that the alley is a prescriptive easement so there is no physical change.

Commissioner PETERSON asked if both lots will be legally nonconforming if the motion is passed.

Ms. Stevens said yes due to lot width.

Commissioner OHM asked why the new lot line could not follow the existing fence.

Ms. Mikulak said the goal of meeting a minimum lot area and giving the carriage house a minimum setback of 5 feet needed to be met and that is the reason behind the jog in the lot line.

Commissioner PETERSON asked if any new non conformities can be added.

Ms. Mikulak said we do not encourage this.

Commissioner LARSON asked the applicant why he has decided to do the subdivision at this time.

**Terry Horton, applicant
1295 Cody Street, Lakewood**

Mr. Horton said he and his wife are retired and owned this property for 20 years and it has been difficult to rent the property in the condition it is in now due to lot lines and fences. He added they plan to sell 2810 and keep 2816 for rental income and it will benefit the neighborhood. He mentioned that with his process they are giving up the possibility to build a triplex which the neighbors will appreciate.

Nobody chose to speak for the citizen's forum.

It was moved by Commissioner ANTOL and seconded by Commissioner PETERSON to recommend APPROVAL of a 5.4-foot variance from the lot width requirement for Lot 1, and a 13.36-foot variance from lot width and 2,029 square foot variance from the lot size requirement for Lot 2 to allow two single-family lots zoned Residential-Three (R-3), for the following reasons:

- 1. The application is in compliance with the review criteria.**
- 2. The variance would not alter the essential character of the locality.**

3. The proposed configuration is consistent with the Comprehensive Plan and other policy documents supported by the city by protecting the positive attributes of the community's established neighborhoods and promoting home ownership opportunities.
4. Special conditions exist which result in a particular and unique hardship.
5. The proposed lot layout is logical and enables the site to be retained for its historic use.
6. The request would not be detrimental to public safety or welfare.

Motion carried 6-0.

It was moved by Commissioner SIMBAI and seconded by Commissioner LARSON to recommend APPROVAL of Case No. WS-19-05, a request for approval of a two-lot subdivision plat on property zoned Residential-Three (R-3) and located at 2810 and 2816 Benton Street, for the following reasons:

1. All agencies can provide services to the property with improvements installed at the developer's expense.
2. The requirements of Article IV of the zoning and development code have been met.

Motion carried 6-0.

- C. Case No. ZOA-19-02:** an ordinance amending Chapter 26 of the Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area.

Mr. Westberg gave a short presentation regarding the ordinance and floodplain background.

Commissioner SIMBAI asked if this Ordinance is not approved will it be disclosed to potential buyers that they are in a floodplain and how this will be enforced.

Mr. Westberg said there would be no disclosure and that he wants people to know they are at risk and in a floodplain and then discussed the three options that were presented to Council.

Commissioner SIMBAI also wanted to know of the 62 homes how many are backed by Federal Mortgage because they have to have flood insurance.

Mr. Westberg said they don't have to have flood insurance if it is a local flood hazard area.

Commissioner LARSON asked if the Planning Commission's decision tonight is a recommendation to City Council.

REQUEST FOR CITY COUNCIL ACTION

TITLE: COUNCIL BILL NO. 15-2019 - AN ORDINANCE AMENDING CHAPTER 26 ARTICLE VIII, OF THE WHEAT RIDGE CODE OF LAWS TO ADD FLOODPLAINS IN THE SLOAN'S LAKE WATERSHED TO THE CITY'S FLOODPLAIN MAPS AS A LOCAL FLOOD HAZARD AREA

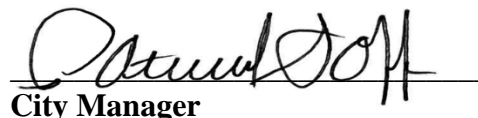
☐ PUBLIC HEARING
☐ BIDS/MOTIONS
☐ RESOLUTIONS

☒ ORDINANCES FOR 1ST READING (09/09/2019)
☐ ORDINANCES FOR 2ND READING (09/23/2019)

QUASI-JUDICIAL:

☐ YES

☒ NO


Engineering Manager
City Manager**ISSUE:**

The Sloan's Lake Flood Hazard Area Delineation (FHAD) has been adopted by both the Colorado Water Conservation Board (CWCB) and the Mile High Flood District (MHFD). The FHAD is now ready to be adopted as a Local Flood Hazard Area (LFHA). This requires an amendment to Chapter 26, Article VIII, of the Wheat Ridge Code of Laws pertaining to floodplain control.

PRIOR ACTION:

The adoption of the LFHA was reviewed by the Council at the November 19, 2018 Study Session with three options being presented. At that meeting, Council directed staff to proceed with option 2, adopting the FHAD as a LFHA. At the August 5, 2019 Study Session, Council reaffirmed the direction to proceed with option 2.

The proposed ordinance to adopt the LFHA WAS presented to Planning Commission on July 16, 2015. After some discussion, Planning Commission unanimously recommended approval of adopting the Sloan's Lake FHAD as a LFHA.

FINANCIAL IMPACT:

None

BACKGROUND:

The Sloan’s Lake Basin is the watershed extending upstream and downstream from Sloan’s Lake, see Attachment 1. The southeast corner of Wheat Ridge, approximately 500 acres is included in the watershed (shown in purple on Attachment 2). Along two tributaries in the City, low-lying areas and structures are prone to potential flooding during storm events.

In 2018, MHFD, along with the Cities of Wheat Ridge, Lakewood, and Edgewater and the City and County of Denver, completed updates to the FHAD and master plan, which were originally done in 1977. Many changes within the watershed and in floodplain modeling have occurred since 1977, so the previous FHAD and master plan did not accurately reflect current conditions. Having an updated FHAD and master plan provide better guidance to minimize damage from flooding. This is done by properly planning potential improvements, both public and private, and effectively regulating identified flood prone areas.

The first step in the update process was to remodel the hydrology, which determines the peak flows at various locations in the watershed. The hydrology update incorporated the modeling changes as well as the land use changes within the watershed. The next step was to update the hydraulics based on the many stormwater improvements that had been implemented by all of the jurisdictions from the 1977 master plan. This information, as well as more accurate and updated topography were then used to update the FHAD.

The study then evaluated several possible improvements that could be done within the watershed to further minimize damage due to flooding. Consideration was given to costs, existing and proposed land use, existing and proposed drainage systems, known drainage or flooding problems, known or anticipated erosion problems, and right-of-way needs.

The resulting master plan can be utilized to plan future improvements, including the locations, alignments, and sizing of storm sewers, channels, and detention/retention basins, and other facilities and appurtenances needed to provide efficient stormwater management for the watershed.

No new projects were identified in the updated master plan within the City of Wheat Ridge. This is largely due to the fact that all of the storm sewer projects that were recommended in the 1977 master plan had been completed by the City. In addition, the 29th Avenue storm sewer project that was completed a few years ago largely mitigated the known minor flooding issues in the southeast portion of the City. That project utilized an abandoned water main in 29th Avenue and the new detention pond at the Richards-Hart Estate to reduce the flooding that was occurring south of 29th Avenue east of Fenton Street.

Sloan’s Lake FHAD Adoption Options

Even though a FHAD has existed for the Sloan’s Lake Basin since 1977, the City has not regulated the flood prone areas because they were not included as a federally regulated Special Flood Hazard Area (SFHA), like the floodplains along Clear Creek and Lena Gulch. Cities can choose to regulate flood hazard areas outside of the SFHA and many local jurisdictions do.

During recent evaluations of the City’s floodplain program, staff explored the option of regulating the flood hazard areas identified in the 1977 FHAD, but realized that those areas did not accurately reflect the current state of development. With an updated FHAD that more accurately represents the flood hazards, the City can now choose to regulate those areas as a LFHA, see Attachment 3 for the limits of the proposed LFHA and the affected buildings.

At the November 19, 2018 Council study session, the following three options were presented to Council:

1. No Action – The City could continue to regulate the identified flood hazard areas the same as other non-federally regulated SFHA, so no flood related regulation.
2. Adopt FHAD as a LFHA – The City could choose to regulate the identified flood hazard areas the same as the flood hazard areas on the SFHA, but without the insurance requirements of a SFHA.
3. Adopt FHAD as a SFHA – The City could choose to have the identified flood hazard areas added to the SFHA, including the mandatory insurance requirements.

After discussion of the three options, Council directed staff to proceed with option 2, adopting the FHAD as a LFHA. At the August 5, 2019 Study Session, Council reaffirmed the direction to proceed with option 2. The implications of this option are described below:

Flood Hazard Notification

Notification of the potential for flooding is an important component of a well-managed floodplain program. Properties on a FHAD and SFHA receive an annual mailing from MHFD that warns them that they are within an area of potential flooding. As a part of its public outreach, the City also does an annual mailing to all properties in a SFHA. With the FHAD adopted as a LFHA, the City mailing will be expanded to include the areas identified in the LFHA.

In addition, the State and City will require that sellers notify buyers during real estate transactions of the flood risk. However, with the FHAD not being in the SFHA, federal notification of flood risk would not occur.

Flood Insurance Requirement

Properties in a SFHA are required to purchase flood insurance if they have a federally backed loan. For all other properties, the flood insurance is voluntary and much less expensive. While often seen as a burden and an unwanted expense, flood insurance provides important coverage for damage that is caused by flooding. With the FHAD adopted as a LFHA, property owners and tenants would be advised of the risk and could then purchase voluntary flood insurance.

Flood Insurance Rates

Flood insurance rates for properties that are not in a SFHA are typically around \$500 annually since the properties are seen as low risk of flooding and receive a preferred risk rate. This would be the case if the FHAD is adopted as an LFHA.

Floodplain Regulations

The purpose of the City’s floodplain regulations is to decrease the risk of flood damage to or caused by improvements that are proposed by property owners. Properties that are included in a LFHA would receive the additional protections resulting from being subject to the City’s floodplain regulations. This would include requirements like raising the lowest floor at least one foot above the base flood elevation (BFE), using flood resistant materials, and anchoring.

Public Outreach

A neighborhood meeting was held on July 31, 2019 to notify the residents of the changes that will occur with the potential adoption of the FHAD as a LFHA. During the neighborhood meeting, the residents were notified of the adoption process, including the public hearings. Postcards were mailed to all owners and tenants with properties that will be added to the floodplain. The meeting was attended by around 10% of the notified properties. Most of the attendees were receptive to the adoption of the LFHA.

RECOMMENDATIONS:

Staff recommends adopting the Sloan’s Lake LFHA.

RECOMMENDED MOTION:

“I move to approve Council Bill No. 15-2019, an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws, to add floodplains in the Sloan’s Lake watershed to the City’s Floodplain maps as a Local Flood Hazard Area on first reading, order it published, public hearing set for Monday, September 23 at 7:00 p.m. in City Council Chambers, and that it take effect 15 days after final publication.”

Or,

“I move to postpone indefinitely Council Bill No. 15-2019, an ordinance amending Chapter 26 Article VIII, of the Wheat Ridge Code of Laws, to add floodplains in the Sloan’s Lake watershed to the City’s Floodplain maps as a Local Flood Hazard Area for the following reason(s) _____.”

REPORT PREPARED BY:

Mark Westberg, Project Supervisor
Steve Ngwen, Engineering Manager
Patrick Goff, City Manager

ATTACHMENTS:

1. Council Bill No. 15-2019
2. Planning Commission meeting minutes excerpt – August 15, 2019
3. Sloan’s Lake Watershed Map
4. Wheat Ridge Insurable Structures in the Floodplain

CITY OF WHEAT RIDGE, COLORADO
INTRODUCED BY COUNCIL MEMBER _____
Council Bill No. 15
Ordinance No. _____
Series of 2019

TITLE: AN ORDINANCE AMENDING CHAPTER 26 ARTICLE VIII OF THE CODE OF LAWS TO ADD FLOODPLAINS IN THE SLOAN'S LAKE WATERSHED TO THE CITY'S FLOODPLAIN MAPS AS A LOCAL FLOOD HAZARD AREA

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), is a Colorado home rule municipality, duly organized and existing pursuant to Section 6 of Article XX of the Colorado Constitution; and

WHEREAS, pursuant to its home rule authority and C.R.S. § 31-23-301(1), the City, acting through its City Council (the "Council"), is authorized to adopt rules and regulations concerning the location, construction, occupancy and use of buildings and structures on and along any storm or floodwater runoff channel or basin; and

WHEREAS, under such authority, the Council previously adopted floodplain regulations, codified as Article VIII of Chapter 26 of the Wheat Ridge Code of Laws ("Code"); and

WHEREAS, On March 5, 2019, the Colorado Water Conservation Board (CWCB) adopted the Sloan's Lake Flood Hazard Area Delineation (FHAD) as a State floodplain map; and

WHEREAS, the Council desires to amend a section of said Article VIII to adopt the flood hazard areas shown on the Sloan's Lake FHAD as a Local Flood Hazard Area (LFHA).

NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WHEAT RIDGE, COLORADO:

Section 1. Paragraph G of Subsection 26-803 of the Code, concerning official maps and engineering reports, is hereby amended by the addition of a new subparagraph, to read in its entirety as follows:

The location and boundaries of the LFHA shall be as shown in the following engineering reports and accompanying maps:

2. Sloan's Lake FHAD dated July 2018 for portions of the City of Wheat Ridge.

Section 2. Safety Clause. The City Council hereby finds, determines, and declares that this Ordinance is promulgated under the general police power of the City of Wheat Ridge, that it is promulgated for the health, safety, and welfare of the public and that this Ordinance is necessary for the preservation of health and safety and for the protection of public convenience and welfare. The City Council further

determines that the Ordinance bears a rational relation to the proper legislative object sought to be attained.

Section 3. Severability; Conflicting Ordinances Repealed. If any section, subsection or clause of this Ordinance shall be deemed to be unconstitutional or otherwise invalid, the validity of the remaining sections, subsections and clauses shall not be affected thereby. All other ordinances or parts of ordinances in conflict with the provisions of this Ordinance are hereby repealed.

Section 4. Effective Date. This Ordinance shall take effect fifteen (15) days after final publication, as provided by Section 5.11 of the Charter.

INTRODUCED, READ, AND ADOPTED on first reading by a vote of ____ to ____ on this 9th day of September 2019, ordered published in full in a newspaper of general circulation in the City of Wheat Ridge and Public Hearing and consideration on final passage set for October 14, 2019, at 7:00 o'clock p.m., in the Council Chambers, 7500 West 29th Avenue, Wheat Ridge, Colorado.

READ, ADOPTED AND ORDERED PUBLISHED on second and final reading by a vote of _____ to _____, this _____ day of _____, 2019.

SIGNED by the Mayor on this _____ day of _____, 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

Approved As To Form

Gerald E. Dahl, City Attorney

First Publication: September 12, 2019
Second Publication: October 17, 2019
Wheat Ridge Transcript
Effective Date: November 1, 2019



PLANNING COMMISSION

Minutes of Meeting

August 15, 2019

1. CALL THE MEETING TO ORDER

The meeting was called to order by Chair OHM at 7:02 p.m. in the City Council Chambers of the Municipal Building, 7500 West 29th Avenue, Wheat Ridge, Colorado.

2. ROLL CALL OF MEMBERS

Commission Members Present: Melissa Antol
Will Kerns
Daniel Larson
Scott Ohm
Richard Peterson
Jahi Simbai

Commission Members Absent: Janet Leo
Vivian Vos

Staff Members Present: Lauren Mikulak, Planning Manager
Stephanie Stevens, Senior Planner
Scott Cutler, Planner II
Mark Westberg, Engineering Projects Supervisor
Tammy Odean, Recording Secretary

3. PLEDGE OF ALLEGIANCE

4. APPROVE ORDER OF THE AGENDA

It was moved by Commissioner SIMBAI and seconded by Commissioner LARSON to approve the order of the agenda. Motion carried 6-0.

5. APPROVAL OF MINUTES – July 18, 2019

It was moved by Commissioner SIMBAI and seconded by Commissioner KERNS to approve the minutes of July 18, 2019, as written. Motion carried 5-0-1 with Commissioner PETERSON abstaining.

6. **PUBLIC FORUM** (This is the time for any person to speak on any subject not appearing on the agenda.)

No one wished to speak at this time.

7. **PUBLIC HEARING**

[...]

C. **Case No. ZOA-19-02:** an ordinance amending Chapter 26 of the Code of Laws to add floodplains in the Sloan's Lake watershed to the City's Floodplain maps as a Local Flood Hazard Area.

Mr. Westberg gave a short presentation regarding the ordinance and floodplain background.

Commissioner SIMBAI asked if this Ordinance is not approved will it be disclosed to potential buyers that they are in a floodplain and how this will be enforced.

Mr. Westberg said there would be no disclosure and that he wants people to know they are at risk and in a floodplain and then discussed the three options that were presented to Council that led to the decision to adopt this as a Local Flood Hazard Area.

Commissioner SIMBAI also wanted to know of the 62 homes how many are backed by Federal Mortgage because they have to have flood insurance.

Mr. Westberg said they don't have to have flood insurance if it is a Local Flood Hazard Area.

Commissioner LARSON asked if the Planning Commission's decision tonight is a recommendation to City Council.

Mr. Westberg confirmed yes whether it is a recommendation of denial or approval, City Council makes the final decision on the ordinance.

Commissioner OHM mention that Colorado has a lot of expansive soils and if the soil gets dry, how does that affect the insurance.

Mr. Westberg said that is not affected by flood insurance, it would then be part of the regular insurance if the foundation of a house cracked.

Elizabeth Grant, resident
3881 Estes Street

Ms. Grant wondered if anyone could get flood insurance if you are out of the floodplain area.

Mr. Westberg said this will be the 1st Local Flood Hazard Area in the City and if you are out of the flood hazard area you can buy flood insurance.

Commissioner OHM closed the citizen's forum.

It was moved by Commissioner KERNS and seconded by Commissioner PETERSON to recommend APPROVAL of the proposed ordinance amending Article VIII of Chapter 26 concerning Floodplain Control to adopt the flood hazard areas shown on the Sloan's Lake FHAD as a Local Flood Hazard Area.

Motion carried 6-0.

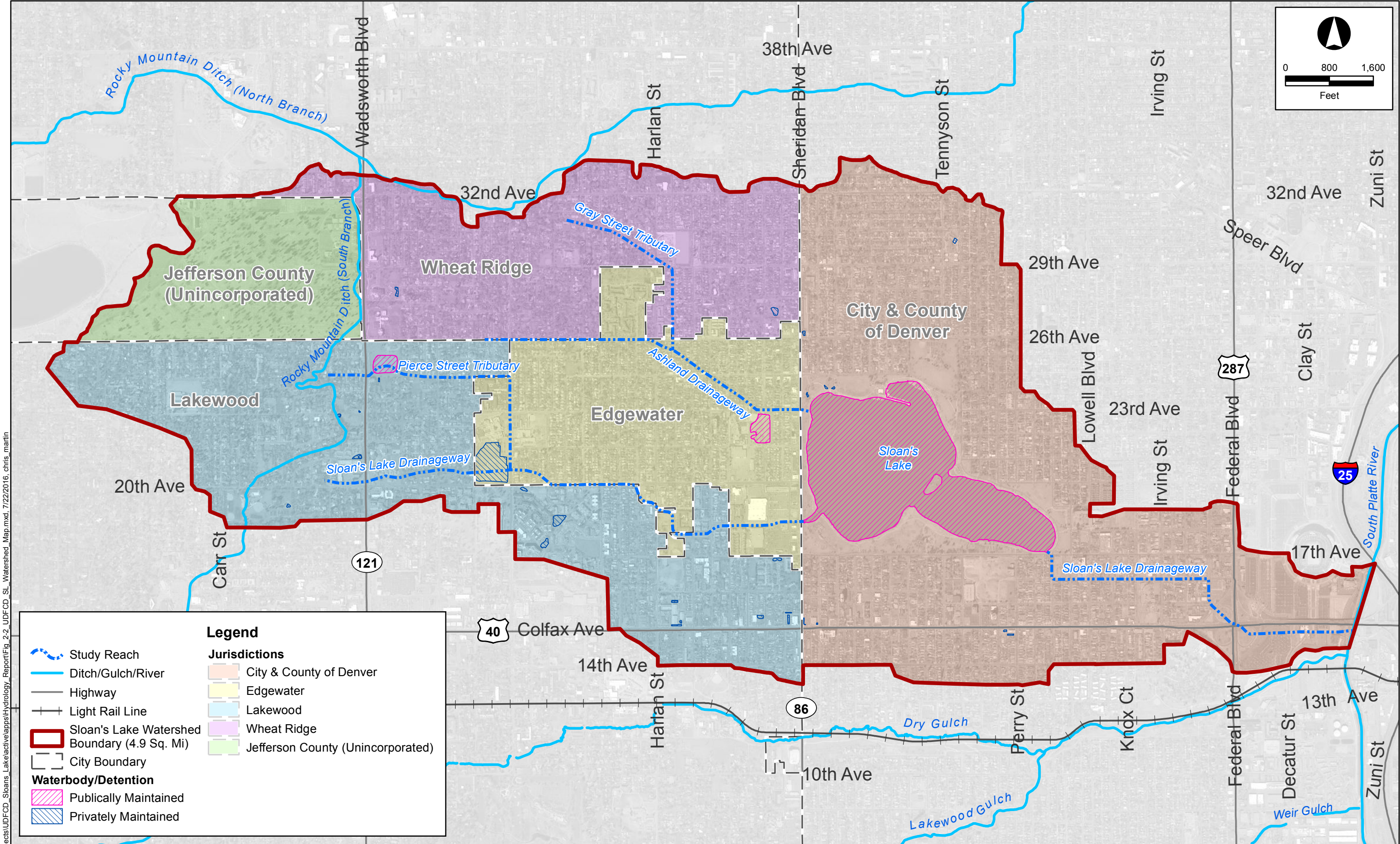
[...]

10. ADJOURNMENT

It was moved by Commissioner KERNS and seconded by Commissioner PETERSON to adjourn the meeting at 9:56 p.m. Motion carried 6-0.

Scott Ohm, Chair

Tammy Odean, Recording Secretary



FILE: G:\gis\projects\UDFCD_Sloans_Lake\active\apps\Hydrology_Report\Fig 2-2_UDFCD_SL_Watershed_Map.mxd, 7/22/2016, chris_martin

No.	DATE	DESCRIPTION	APPR.



designed by: _____
drawn by: _____ CM
checked by: _____ RK
project no.: 16.155.026
date: 07/22/2016



URBAN DRAINAGE AND FLOOD
CONTROL DISTRICT,
CITY AND COUNTY OF DENVER

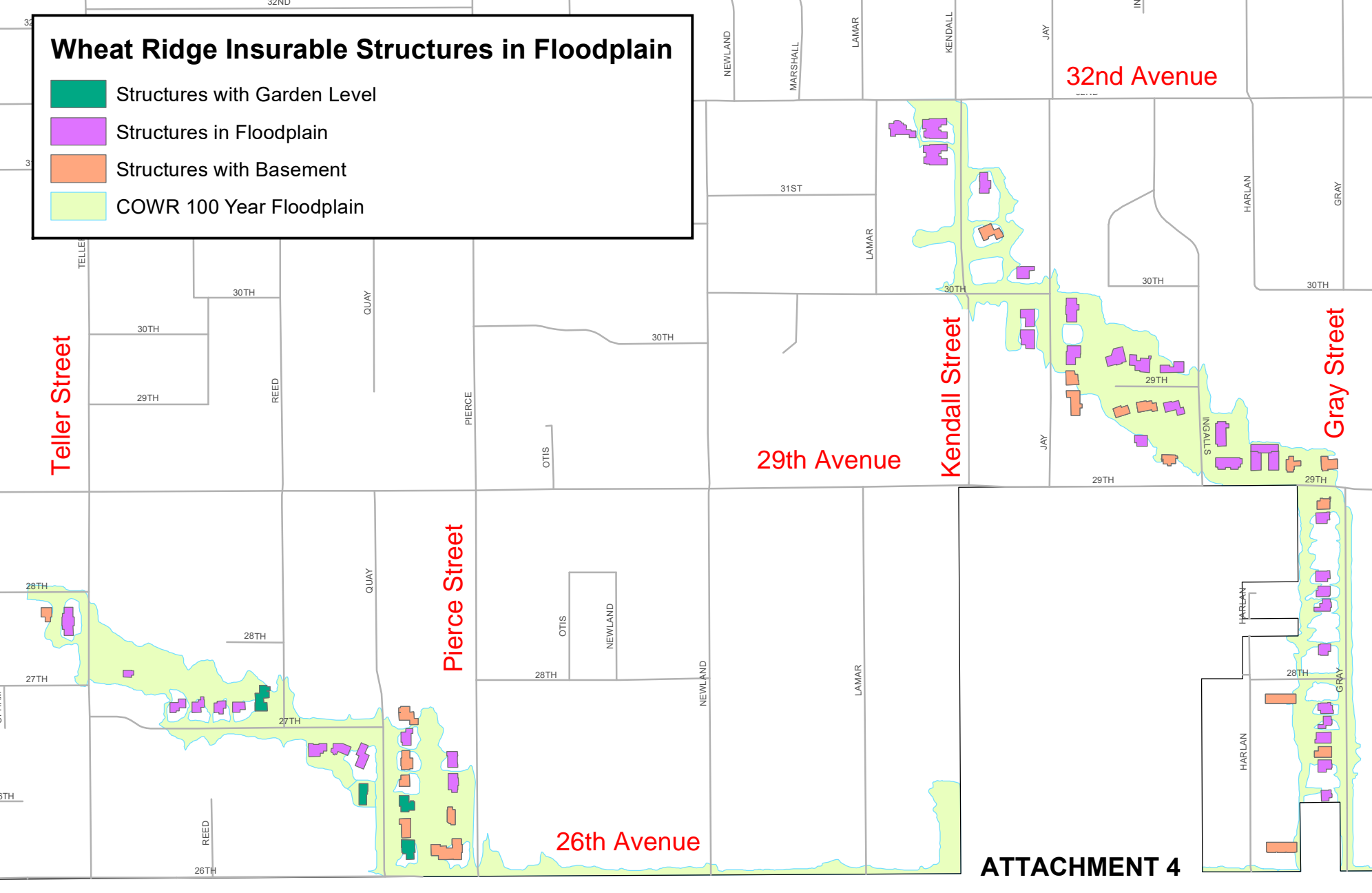
MAJOR DRAINAGEWAY PLAN
SLOAN'S LAKE DRAINAGEWAY
AND TRIBUTARIES

WATERSHED MAP

FIGURE
2-2

Wheat Ridge Insurable Structures in Floodplain

- Structures with Garden Level
- Structures in Floodplain
- Structures with Basement
- COWR 100 Year Floodplain



REQUEST FOR CITY COUNCIL ACTION

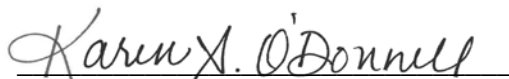
TITLE: MOTION TO AWARD A CONTRACT AND APPROVE SUBSEQUENT PAYMENT OF \$83,000 TO KC CONSTRUCTION INC., OF CASTLE ROCK, CO, FOR THE WHEAT RIDGE POLICE EVIDENCE BUILDING IMPROVEMENTS AND APPROVE A 10% CONTINGENCY IN THE AMOUNT OF \$8,300

☐ PUBLIC HEARING
☒ BIDS/MOTIONS
☐ RESOLUTIONS

☐ ORDINANCES FOR 1ST READING
☐ ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: ☐ YES

☒ NO


Parks and Recreation Director


City Manager

ISSUE:

The intent of this project is to obtain the services of a general contractor to add a second floor within one side of the existing structure to create additional storage in the Wheat Ridge Police evidence building. Modifications will include structural, mechanical and electrical additions/improvements as defined in the drawings and specifications for this project

PRIOR ACTION:

OZ Architectural Firm has provided complete design drawings for the project. Scope of work, engineering specifications, schedule, and funding have all been identified and aligned with this project.

FINANCIAL IMPACT:

Funding for this project is budgeted in the Capital Improvement Program (CIP). The funds shall provide for all general contractor costs as identified in the bid package, including but not limited to any demolition, mobilization, site management, site cleanup costs. Itemized costs for structural, mechanical, and electrical considerations have been provided by the contractor.

BACKGROUND:

The police evidence building is quickly running out of space to house the quantity of materials that need to be stored for, often times, an indeterminate amount of time. The current building was constructed to utilize all but one quarter of the second floor available space. This project will complete the build out of the second floor and provide a much needed increase in square footage.

RECOMMENDATIONS:

Facility Maintenance staff recommend the award of the Wheat Ridge Police Evidence Building Addition project to KC Construction Inc., of Castle Rock, CO.

RECOMMENDED MOTION:

“I move to award a contract and approve subsequent payment of \$83,000 to KC Construction Inc., of Castle Rock, CO, for the Wheat Ridge Police Evidence Building improvements and approve a 10% contingency in the amount of \$8,300.”

Or,

“I move to deny award and payment to KC Construction Inc., of Castle Rock, CO, in the amount of \$83,000 for the Wheat Ridge Police Evidence Building Addition project, and disapprove a 10% contingency in the amount of \$8,300, for the following reason(s)
_____.”

REPORT PREPARED/REVIEWED BY:

Zach Lovato, Parks, Forestry and Open Space Manager
Karen O'Donnell, Director of Parks and Recreation
Jennifer Nellis, Purchasing Agent
Patrick Goff, City Manager

ATTACHMENTS:

1. ITB-19-13 Bid Tabulation

Subject to review for completeness and accuracy.
85K estimate



PROJECT: ITB-19-13

Evidence Building Improvement Project

DUE DATE/TIME: TUESDAY,AUGUST 20, 2019 BY 1 P.M. LOCAL TIME

REQUESTED BY: MIKE FARRELL, ZACH LOVATO, DARREL GUADNOLA
4th OPENED BY: JENNIFER NELLIS, PURCHASING AGENT
KH WITNESSED BY: KIRBY HOLLUMS, BUYER II

ALLOWED VENDOR (PRIME)	Crossland Construction Co	KC Construction	H & L Development	Rapid Restoration & Construction	TCC Corporation
LOCATION	Centennial, CO	Castle Rock, CO	Denver, CO	Arvada, CO	Windsor, CO
ATTENDED MANDATORY SITE VISIT	yes	yes	yes	yes	yes
BIDDER ACKNOWLEDGEMENT FORM -p3	yes	yes	yes	yes	yes
ACKNOWLEDGE ADDENDA(4)	yes	yes	yes	yes	yes
CONTRACTOR'S QUALIFICATION FORM	yes	yes	yes	yes	yes
LIST OF SUB-CONTRACTORS	yes	yes	yes	yes	yes
NON-DISCRIMINATION ASSURANCE FORM	yes	yes	yes	yes	yes
ILLEGAL ALIEN COMPLIANCE	yes	yes	yes	yes	yes
NON-COLLUSION AFFADAVIT	yes	yes	yes	yes	yes
KEEP JOBS IN COLORADO FORM	yes	yes	yes	yes	yes
BID BOND	yes	yes	yes	yes	yes
PROPOSAL / PRICING SCHEDULE	yes	yes	yes	yes	yes
Mob/Demo/Site Mgmt/Clean Up	\$22,418.00	\$20,000.00	\$54,909.00	\$26,310.00	\$26,876.00
Structural	\$13,916.00	\$46,000.00	\$16,850.00	\$41,176.00	\$32,922.00
Mechanical	\$10,569.00	\$12,000.00	\$14,200.00	\$14,000.00	\$13,001.00
Electrical	\$20,413.00	\$5,000.00	\$8,800.00	\$21,647.00	\$49,475.00
Subtotal	\$67,316.00	\$83,000.00	\$94,759.00	\$103,133.00	\$122,274.00
Notes/Other	\$32,284.00	NA	NA	NA	NA
TOTAL Bid	\$99,600.00	\$83,000.00	\$94,759.00	\$103,133.00	\$122,274.00

REQUEST FOR CITY COUNCIL ACTION


TITLE: RESOLUTION NO. 52-2019 – A RESOLUTION APPROVING THE ACCEPTANCE OF JUSTICE ASSISTANCE GRANT FUNDS IN THE AMOUNT OF \$10,440 TO BE COMBINED WITH BUDGETED FUNDS TO UPGRADE THREE SECURITY CAMERAS COVERING THE POLICE DEPARTMENT PARKING LOT

☐ PUBLIC HEARING
☐ BIDS/MOTIONS
☒ RESOLUTIONS

☐ ORDINANCES FOR 1ST READING
☐ ORDINANCES FOR 2ND READING

QUASI-JUDICIAL: ☐ YES

☒ NO


Interim Chief of Police
City Manager**ISSUE:**

The Bureau of Justice Assistance (BJA) awards police departments Justice Assistance Grant (JAG) funds to be used for law enforcement purposes. For 2019, BJA has allocated \$10,440 for the Wheat Ridge Police Department (WRPD). The WRPD would like to use those funds to upgrade three security cameras that monitor the employee parking lot east of the WRPD to a digital format.

PRIOR ACTION:

This is an annual award by the BJA. The WRPD used the 2017 and 2018 funds, in conjunction with asset forfeiture funds to purchase protective ballistic equipment for patrol officers.

FINANCIAL IMPACT:

The funds provided will not completely cover this project. The project is slated to cost \$16,658. JAG funds of \$10,440 will be combined with \$6,218 of IT Division funds that have been previously budgeted.

BACKGROUND:

Site security has become an increasingly important priority. The incidents of violence against government employees as well as elected officials has increased nationwide. The particular area to be monitored with these new cameras has seen an increase in the presence of persons whose purposes are not completely known. There is no reasonable way to enclose and secure employee parking at this time. Allowing the WRPD employees to use the monitors at the employee exit to view the parking lot prior to leaving the building, as well as having a video record of activity in lot, would serve a significant security and law enforcement purpose.

RECOMMENDATIONS:

Staff recommends that Council accept the JAG funds to upgrade the three security cameras covering the police department employee parking lot, which will include the additional \$6,218 from budgeted IT Division funds to complete the project.

Alternatives:

1. Council may choose to have staff develop another project that fits BJA's definition of law enforcement purposes to which the JAG funds should be allocated.
2. Council may choose not to accept the JAG funds.

RECOMMENDED MOTION:

"I move to approve Resolution No. 52-2019, a resolution approving the acceptance of Justice Assistance Grant funds in the amount of \$10,440 to be combined with budgeted funds to upgrade three security cameras covering the police department parking lot.

Or,

"I move to postpone indefinitely Resolution No. 52-2010, a resolution approving the acceptance of Justice Assistance Grant funds in the amount of \$10,440 to be combined with budgeted funds to upgrade three security cameras covering the police department parking lot for the following reason(s) _____."

REPORT PREPARED/REVIEWED BY:

Dave Pickett, Interim Police Chief

Patrick Goff, City Manager

ATTACHMENTS:

1. Resolution No. 52-2019

CITY OF WHEAT RIDGE, COLORADO
RESOLUTION NO. 52
Series of 2019

TITLE: A RESOLUTION APPROVING THE ACCEPTANCE OF JUSTICE ASSISTANCE GRANT FUNDS IN THE AMOUNT OF \$10,440 TO BE COMBINED WITH BUDGETED FUNDS TO UPGRADE THREE SECURITY CAMERAS COVERING THE POLICE DEPARTMENT PARKING LOT

WHEREAS, the City of Wheat Ridge, Colorado (the "City"), acting through its City Council ("Council"), is a home rule municipality with statutory and constitutional authority to provide law enforcement services; and

WHEREAS, on an annual basis, the Bureau of Justice Assistance (BJA) awards local police departments Justice Assistance Grant (JAG) funds to be used for law enforcement purposes; and

WHEREAS, in 2019, the BJA has awarded \$10,440 in JAG funds to the Wheat Ridge Police Department (WRPD); and

WHEREAS, the WRPD has proposed to use those funds, in conjunction with other previously budgeted and available funds, to upgrade the security cameras that monitor the employee parking lot to the east of City Hall to digital format; and

WHEREAS, because said parking lot is so close in proximity to City Hall, including the primary access route used by WRPD employees, and public access to the area is not restricted in any manner, the parking lot area poses possible safety and security risks; and

WHEREAS, the City Council finds that it is desirable and in furtherance of the legitimate law enforcement interests of City Hall and City employee safety and security to upgrade the existing parking lot cameras to higher quality digital equipment; and

WHEREAS, the City Council therefore wishes to accept the 2019 JAG funds for said purpose, as set forth herein.

NOW THEREFORE BE IT RESOLVED by the City Council of the City of Wheat Ridge, Colorado, as follows:

The City of Wheat Ridge hereby accepts the 2019 award of Justice Assistance Grant funds in the amount of \$10,440, to be combined with budgeted funds to upgrade three (3) security cameras covering the WRPD parking lot.

DONE AND RESOLVED this 9th day of September, 2019.

Bud Starker, Mayor

ATTEST:

Janelle Shaver, City Clerk

**SPECIAL STUDY SESSION AGENDA
EXECUTIVE SESSION AGENDA**

CITY COUNCIL
CITY OF WHEAT RIDGE, COLORADO

7500 W. 29th Ave.
Wheat Ridge CO

September 9, 2019

Upon Recess from Regular Council Meeting

Individuals with disabilities are encouraged to participate in all public meetings sponsored by the City of Wheat Ridge. Call Sara Spaulding, Public Information Officer 303-235-2877 at least one week in advance of a meeting if you are interested in participating and need inclusion assistance.

Citizen Comment on Agenda Item

1. Clear Creek Crossing PIF Collecting Agent Agreement

RECONVENE RECESSED COUNCIL MEETING

Executive session for a conference with the City Attorney, City Manager and appropriate staff under Charter Section 5.7(b)(1) and CRS 24-6-402(4)(b), to receive legal advice concerning litigation: Clark/Sorrentino and McLeod

ADJOURN COUNCIL MEETING following close of executive session

Memorandum

TO: Mayor and City Council

FROM: Patrick Goff, City Manager

DATE: September 9, 2019

SUBJECT: PIF Collecting Agency Agreement – Clear Creek Crossing

The City has negotiated Agreements with Evergreen-Clear Creek Crossing, LLC (Evergreen) and the Longs Peak Metropolitan District (the “District”) for a project at the southwest corner of Interstate 70 and Colorado Highway 58 known as Clear Creek Crossing (“Project”).

The project’s public improvements, including the hook ramps, are being funded in part by a Public Improvement Fee (PIF) per the terms of the Public Finance Agreement (PFA) dated July 9, 2018.

The PFA requires engaging the services of a PIF Collecting Agent. After evaluating options, the District requests that the City serve as the PIF Collecting Agent.

District representative Russell Newton will share information regarding the request at the September 9, 2019 Study Session.

ATTACHMENTS:

1. Memo from the Board of Directors of the District
2. Draft PIF Collecting Agent Agreement
3. Redlined PIF Collecting Agent Agreement Compared to 2018 Draft
4. Presentation

MEMORANDUM

TO: City Council, City of Wheat Ridge, Colorado
c/o Patrick Goff, City Manager

FROM: Board of Directors, Longs Peak Metropolitan District
c/o Russell Newton, Esq.

DATE: August 29, 2019

RE: City Council Consideration of PIF Collecting Agent Agreement re Clear Creek Crossing

Dear Patrick,

The Board of Directors of the Longs Peak Metropolitan District ("District") respectfully requests the City Council's consideration of the attached PIF Collecting Agent Agreement.

As you are aware, the Clear Creek Crossing Project's public improvements, including the City's 2E Hook Ramp Project, are being financed in part via Public Improvement Fees ("PIFs") as set forth in the Public Finance Agreement with the City dated July 9, 2018 ("PFA"). The PIFs are fees derived from private covenants imposed on property within the District, and they operate similar to a sales tax by being charged against certain purchases made on the property. Although the PIFs originate from private covenants, PIF revenue serves a public purpose and is limited to providing public improvements for the Clear Creek Crossing Project and other approved costs consistent with the PFA and PIF covenants.

Section 5.4 of the PFA requires the engagement of a PIF Collection Agent to collect the PIF revenue in the same manner that the City of Wheat Ridge collects its taxes on purchases. The District has identified private accounting firms that are able to perform this service; however, there are advantages to having the City of Wheat Ridge provide the Collection Agent services.

First, it will eliminate the need for a duplication of efforts. The City already collects taxes on purchases within its boundaries, and having businesses remit the taxes and PIFs to the same entity provides for more efficient and seamless administration. In addition, Section 5.3 of the PFA contemplates a scenario where Credit-PIF revenue is retained by the City in lieu of tax revenue, which furthers the rationale for the City being the Collection Agent.

Second, the public accounting firms will charge a fee for the collection service. The fee for such service in the proposed agreement is 2% of the PIF revenue collected by the agent. At {00416300}

project buildout, the collection fee on PIF revenue is expected to exceed \$20,000 annually. The City is an ideal recipient of this charge given the public nature of the PIFs, as it keeps the funds collected in the coffers of a public entity as opposed to the use and profit of a private accounting firm.

Lastly, the City is a more reliable, permanent, and transparent agent. The City has more experience than any private firm in administering and enforcing the collection of taxes, and PIF revenue collected by the City is more transparent and less susceptible to misappropriation. Moreover, given the lengthy term that collection services are needed, the City is best suited as a long-term agent and partner in the Clear Creek Crossing Project.

The District Board appreciates the City Council's consideration of PIF Collecting Agent Agreement. Please advise if there is any further information that you require in order to make a decision on the Agreement.

On behalf of the Board of Directors of the
Longs Peak Metropolitan District

SETER & VANDER WALL, P.C.



Russell Newton

PIF COLLECTING AGENT AGREEMENT

This **PIF COLLECTING AGENT AGREEMENT** (the "**Agreement**") is effective September 16, 2019, among the **LONGS PEAK METROPOLITAN DISTRICT** (the "**District**"), a quasi-municipal corporation and political subdivision of the State of Colorado ("**State**"), **EVERGREEN- CLEAR CREEK CROSSING, L.L.C.**, an Arizona limited liability company (the "**Developer**"), and the **CITY OF WHEAT RIDGE** (the "**City**"), a home rule city and political subdivision of the State.

RECITALS

A. The District was formed to provide Public Improvements and services for development of property within and without its boundaries.

B. The District, Developer and the City entered into a Public Finance Agreement (the "**PFA**"), dated July 9, 2018, which provides for Public Improvement Fees (the "**PIFs**") to be imposed on property by means of a covenant that runs with the land and applicable to activity conducted within a project known as Clear Creek Crossing (the "**CCC Project**") to support District bonds for the construction of Public Improvements all as defined in the PFA (the "**District Bonds**").

C. The Public Infrastructure to be constructed by the District will touch and concern the land and will benefit the CCC Project and surrounding property.

D. The District will enter into one or more agreements with a trustee (the "**Trustee**") concerning receipt of funds generated under the PFA and to apply those funds to payments on District Bonds and for the benefit of the Public Improvements (the "**Bond Indenture**").

E. The Developer has recorded against the CCC Project property:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

(the "**PIF Covenants**"), pursuant to which a PIF will be imposed, and funds collected and paid (the "**PIF Revenue**").

F. The City regularly collects taxes pursuant to the Wheat Ridge Code of Laws and all regulations promulgated thereunder (the "**Tax Ordinance**") and is willing to collect the PIF Revenue on behalf of the District and the Developer to facilitate the completion of the Public Improvements, which will be beneficial to the City and its citizens.

G. The parties acknowledge that (i) the PIFs are a charge imposed pursuant to the PIF Covenants for the benefit of the CCC Project and not through the exercise of any power by the City; (ii) the PIF Revenue is not tax revenue in any form; (iii) the PIF Revenue is to be pledged and used for the payment of the principal of and interest on the District Bonds or as otherwise provided in the PFA and Bond Indentures; and (iv) the authority of the City to collect the PIFs is derived through this Agreement and the City's authority is limited by and enforceable only in accordance with the terms of this Agreement.

H. The District Bonds do not constitute obligations, indebtedness or multiple fiscal year financial obligations of the City and do not constitute or give rise to a pecuniary liability of the City, or a charge against its general credit or taxing powers. The City has no obligations of any nature to pay the principal of or interest on the District Bonds.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual agreements, promises and covenants herein contained, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. DEFINITIONS. Any capitalized term not defined in this Agreement but defined in the PIF Covenants shall have the meaning given to such term in the PIF Covenants. If

any term is defined in both the PIF Covenants and this Agreement, the definition set forth herein shall control for all purposes of this Agreement. The following capitalized terms shall have the following meanings unless the context requires otherwise.

"**Agreement**" means this PIF Collecting Agent Agreement as amended and supplemented from time to time.

"**City**" has the meaning set forth in the introductory paragraph.

"**Collecting Agent**" means the City acting as the agent of the District.

"**Collection Fee**" means a fee equal to two percent (2%) of the PIF Revenue.

"**Information**" means any written information or guidelines prepared by the District and the Collecting Agent regarding the calculation, payment and reporting of the PIFs, as amended and supplemented from time to time.

"**PIF Sales**" means the "Admissions Sales", "Lodging Sales" and "Retail Sales" defined in the PIF Covenants.

"**Public Improvements**" has the meaning set forth in the PFA.

"**Report Recipients**" are the City, Trustee and District.

"**Waiver of Confidentiality**" means a waiver of confidentiality agreement that is substantially similar in form and substance to the form of the Public Financing Addendum for tenant Retailers which is attached hereto as Exhibit A and incorporated herein by this reference for all purposes, as amended and supplemented from time to time.

ARTICLE II PUBLIC IMPROVEMENT FEES

Section 2.1. Payment of Public Improvement Fees. The PIFs shall be determined, calculated, adjusted and payable by Retailers in accordance with the terms and provisions of the PIF Covenants. The procedures for the collection, segregation, remittance, payment, delinquencies and reporting (but not for the calculation) of the PIFs shall be substantially similar to those procedures followed by the City for the collection of the related taxes or as otherwise supplemented or provided in the Information.

Section 2.2. Remittance of Public Improvement Fees. PIFs shall be paid to the City as the Collecting Agent substantially as set forth below:

a. No later than the monthly date that taxes are payable, each Retailer shall remit all PIF amounts payable pursuant to the PIF Covenants to the Collecting Agent on reporting forms provided by the Collecting Agent.

b. All adjustments, including refunds, additions or other modifications, to PIFs payable shall be processed in a manner substantially similar to the process followed by the City for an adjustment of the related City tax. If an adjustment increases the amount of the PIF or results in a refund of such PIF, the payer shall claim any credit or pay additional PIFs in the next monthly reporting period utilizing the City's standard reporting and remittance forms.

ARTICLE III COLLECTION OF PUBLIC IMPROVEMENT FEES

Section 3.1. Appointment of City as Collecting Agent.

a. The District and Developer appoint the City as Collecting Agent for purposes of receiving, collecting, administering, remitting and disbursing all PIF Revenue paid pursuant to the PIF Covenants during the term of this Agreement. City accepts the responsibility of receiving the PIF Revenue and, after deduction of the Collection Fee, depositing the PIF Revenue within five (5) business days after receipt and processing as directed by the District, and upon payment in full or defeasance of the District Bonds, as directed by the Developer.

b. PIF Revenue constitutes funds collected for another government within the meaning of *Article X, Section 20*, of the *Colorado Constitution*. The City is not the agent of any person other than the District and Developer and shall have only those responsibilities expressly stated and in written correspondence from the District or Developer, as applicable, directing payment or deposit of the PIF Revenue. The obligations of the City under this Agreement shall not constitute a multiple fiscal year direct or indirect debt or other financial obligations of the City, and the payment of any costs incurred or to be incurred by the City in performing its obligations hereunder shall be subject to annual appropriation by the City Council.

c. The PIF Revenue collected pursuant to this Agreement will be utilized as provided in the PFA and the Bond Indentures, and, after deduction of the Collection Fee, shall be distributed in accordance with the terms of this Agreement.

Section 3.2. Covenant of the Parties.

a. Each party hereby represents and warrants to and for the benefit of the other party:

- (1) That it has full power and legal authority to enter into this Agreement;
- (2) That it has taken or performed all acts or actions that may be required by its governing documents, statute or charter to confirm its authority to execute, deliver and perform each of its obligations under this Agreement; and
- (3) That neither the execution and delivery of this Agreement, nor compliance with any of the terms, covenant or conditions of this Agreement will result in a violation of or default under any other agreement or contract to which it is a party or by which it is bound.

b. From time to time but not later than the last day of each calendar month commencing with the date of execution of this Agreement, each party will, to the extent that it has actual knowledge thereof, provide to the other party a current listing of the name and address of each person or entity required to pay PIFs (the “**PIF Obligors**”) and the date of opening of the retailer’s store or operation subject to the PIF Covenants.

c. The District will file, or cause to be filed, with the Collecting Agent a Waiver of Confidentiality executed by each PIF Obligor, authorizing the Collecting Agent to share information contained in the reports, returns and other documents delivered by the PIF Obligor. The Collecting Agent shall be responsible for providing reports to the Report Recipients only for PIF Obligors for whom the District has provided a Waiver of Confidentiality, and to the extent permitted by law, the District shall indemnify and hold the City harmless from any liability that may arise from the release of such reports to the Report Recipients.

d. The parties shall cooperate with each other and shall undertake any reasonably necessary action that is required to support or assist in the collection, remittance and reporting of all PIFs.

Section 3.3. Provision of PIF Information to PIF Obligors. Within ten days after receipt of written notice from the District of any new PIF Obligor, the Collecting Agent shall provide the PIF Obligor: (i) all Information or policies and procedures adopted by the District regarding the calculation, payment and reporting of PIFs, and (ii) all reporting forms, procedures and other instructions concerning the collection and remittance of PIFs to the Collecting Agent, and all information required under the PIF Covenants

Section 3.4. Collection and Reporting of PIF Revenues.

a. The parties shall take the following specific actions in connection with the collection and reporting of PIF Revenues:

(1) The Collecting Agent shall receive PIF Revenue remitted by PIF Obligors and, after deduction of the Collection Fee, transfer, remit to and deposit it within five (5) business days after receipt and processing thereof as directed in writing by the District or Developer, as applicable.

(2) The Collecting Agent shall receive from PIF Obligors all reports, returns and other documents delivered pursuant to the PIF Covenants. If a Waiver of Confidentiality has been provided, the Collecting Agent shall, subject to the terms of Section 3.2.c, make copies of all reports, returns and other documents available to the Report Recipients.

(3) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a first delinquency notice to any PIF Obligor (i) that fails to timely remit PIF Revenue during the preceding collection month or (ii) that the Collecting Agent has reasonably determined to have paid an incorrect amount for the preceding collection month. The Collecting Agent shall send copies of all first delinquency notices to the

District, together with a report of the amount of such delinquency, and the period for which such PIF Obligor is delinquent.

(4) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a second delinquency notice to any PIF Obligor that has not paid any delinquent PIF. The Collecting Agent shall send copies of all second delinquency notices to the District, together with a report listing the name of each PIF Obligor to whom the second delinquency notice was sent, the amount of such delinquency, and the period of delinquency.

(5) The Collecting Agent is not obligated to distribute additional delinquency notices after the second delinquency notice.

(6) In accordance with terms mutually acceptable to and subsequently approved in writing, the Collecting Agent, Developer or District may initiate, pursue and enforce, or cause to be pursued and enforced, civil actions or other judicial proceedings to collect any delinquent PIFs, interest or penalties due, or to enforce any other obligation under the PIF Covenants. Otherwise, the City shall have no obligation to undertake any enforcement action of any nature.

(7) Subject to subparagraph b. of this Section 3.4, the Collecting Agent shall prepare and deliver to the District and Developer, on or as soon as practicable after the 45th day following the end of each collection month, a report (i) describing the amount of the respective PIF Sales and the amount of PIF Revenue received by the Collecting Agent from each PIF Obligor during such collection month and for the calendar year to date, (ii) describing the amount of PIF Revenue received since the last report representing delinquent PIF Revenue, including interest and penalties, and the PIF Obligors to whom such delinquent fees are attributable, and (iii) identifying each PIF Obligor who is delinquent in submitting reports, returns and other documents.

(8) The Collecting Agent shall, within 90 days after the end of each calendar year, provide the District and Developer an annual unaudited report setting forth the PIF Revenue received by the Collecting Agent for the preceding calendar year. At reasonable times during regular business hours, the District, Developer, any Trustee or their designee are authorized to audit, or cause audits to be conducted of, the Collecting Agent's books and records. The Collecting Agent shall, within 60 days after notice, pay any deficiency as directed by the District or Developer, together with interest thereon (subject to appropriation by the City Council) at a rate equal to one percent (1%) of the prime rate published in the Wall Street Journal on the date of discovery of such deficiency and notice thereof to the Collecting Agent (not to exceed eighteen percent (18%)).

b. All reports, information or data concerning PIF Sales or PIF Revenue received by the Collecting Agent shall remain confidential, unless otherwise required to be made public by law. All information shall be used only for purposes of collecting PIFs or enforcing PIF Covenants, monitoring compliances, disseminating information to prospective purchasers or

owners of the District Bonds, or as may otherwise be authorized under the PIF Covenants and shall be subject to the terms of Section 3.2.c.

Section 3.5. Remittance of Public Improvement Fees. All PIF Revenue shall, after deduction of the Collection Fee, be transferred and remitted as directed by the District or Developer, as applicable. The Collecting Agent shall have no responsibility or liability for the application of PIF Revenue to District Bonds or other purposes.

Section 3.6. Bankruptcy of Retailer. In the event either party to this Agreement receives notice of any action in the bankruptcy of any PIF Obligor, such party shall, as soon as practicable, give notice or convey copies of such notice which it received to the other party.

Section 3.7. Collection Fee and Reimbursable Expenses. In consideration of its performance of collection services hereunder, the Collecting Agent shall retain the Collection Fee on PIF Revenue collected.

ARTICLE IV MISCELLANEOUS TERMS

Section 4.1. Perfection of Security Interests. The District and the City elect to have all provisions of Section 11-57-201, et seq., C.R.S., as amended, apply to the security interest of such parties in the PIFs; provided, however, that such election shall not operate to modify or limit the rights conferred on the District by any provision of State law.

Section 4.2. Beneficiaries of Public Improvement Fees. Notwithstanding the appointment of the City as the Collecting Agent, the District and Developer are the primary beneficiaries of the PIFs in accordance with the terms of the PIF Covenants, the PFA and Bond Indentures.

Section 4.3. Sovereign Powers and Immunities. Nothing in this Agreement shall be construed as diminishing, delegating or otherwise restricting any of the sovereign powers or immunities of the City or District.

Section 4.4. Resignation; Removal; Assignment. The City may resign as Collecting Agent by submitting a notice of resignation to the District no less than 60 days before the resignation is intended to take effect. The resignation shall be effective on the termination date set forth in such notice. The City may be removed as Collecting Agent by the District or Developer at any time to become effective not earlier than 60 days after notice to the City. If the City has breached a term or condition of this Agreement, the District or Developer may remove the City as Collecting Agent, effective immediately. This Agreement shall not be assigned by either party other than to a successor by operation of law or with the prior written consent of the other parties.

Section 4.5. Notice. All notices, certificates or other communications required to be given hereunder shall be in writing and shall be deemed given when delivered in person, or by

prepaid overnight express mail or a national courier service, or mailed by certified or registered mail, postage prepaid, addressed as follows:

To the City:

City Manager
City of Wheat Ridge
7500 West 29th Avenue
Wheat Ridge, CO 80033
Email: pgoff@ci.wheatridge.co.us

To the District:

Seter & Vander Wall, P.C.
7400 East Orchard Road, Suite 3300
Greenwood Village, CO 80111
Attn: Kim J. Seter, Esq.
Email: kseter@svwpc.com

To the Developer:

Evergreen-Clear Creek Crossing, L.L.C.
1873 S. Bellaire Street, Ste. 1200
Denver, CO 80222
Attn: Tyler Carlson
Email: tcarlson@evgre.com

with copy to:

2390 E. Camelback Road, Ste. 410
Phoenix, AZ 85016
Attn: Laura Ortiz
Email: lortiz@evgre.com

The parties may by written notice designate any additional or different address to which subsequent notices, certificates or other communications will be sent.

Section 4.6. No Third Party Beneficiaries. There are no intended beneficiaries of this Agreement except the City, Developer and the District. Nothing contained in this Agreement shall give or allow any claim or right of action by any person with respect to this Agreement.

Section 4.7. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties and their duly authorized successors and assigns.

Section 4.8. Amendment. This Agreement may only be amended, changed, modified or altered by an instrument in writing duly executed by each party.

Section 4.9. Computation of Time. In computing a period of days, the first day shall be excluded and the last day shall be included. If the last day of any period is not a business day, the period shall be extended to include the next succeeding business day. If a number of months is to be computed by counting the months from a particular day, the period shall end on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period shall end on the last day of that month.

Section 4.10. Payments Due on a Day Other Than a Business Day. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Agreement shall be a day other than a business day, such payment may be made, or such act performed, or such right may be exercised on the next succeeding business day with the same force and effect as if done on the nominal date provided in this Agreement or the PIF Covenants.

Section 4.11. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof which shall be enforced to implement the manifest intent hereof.

Section 4.12. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 4.14. No Indemnification by City. The City shall have no obligation to indemnify, hold harmless or defend the District, Developer, any District Bond Trustee or any other person for any purpose whatsoever. The only remedies of the parties are set forth in Section 4.15.

Section 4.15. Default and Remedies. If any party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the terms and provisions of this Agreement, and if such failure of performance continues for a period of 30 days following notice of default from another party (or such additional period of time as may be reasonably necessary to cure such default as long as the curative action is commenced within such 30 day period and is diligently and continuously pursued to completion), then any non-defaulting party may initiate a court action (i) to enjoin such failure of performance, (ii) to recover damages, and (iii) to seek any other remedy available at law or in equity, including an action for specific performance. The prevailing party in any court action shall be entitled to an award of costs and reasonable attorney fees. No remedy provided under this Agreement shall be required to be exercised as a prerequisite to seeking any other relief to which such party may then be entitled. All rights and remedies under this Agreement are cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any other right or remedy for any default at the same or a different time. Any delay in asserting any right or

remedy under this Agreement shall not operate as a waiver of any such right or limit such right in any manner.

Section 4.16. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Agreement.

This PIF Collecting Agent Agreement is entered into and executed by the parties as of the date set forth above.

LONGS PEAK METROPOLITAN DISTRICT

By: _____

ATTEST:

By: _____

CITY OF WHEAT RIDGE

By: _____

Bud Starker, Mayor

ATTEST:

By: _____

Office of the City Clerk

APPROVED AS TO FORM:

Gerald E. Dahl, City Attorney

DEVELOPER

**EVERGREEN-CLEAR CREEK
CROSSING, L.L.C.,**
an Arizona limited liability company

By: Evergreen Development Company-2016, L.L.C.,
an Arizona limited liability company,
its Manager

By: Evergreen Devco, Inc.,
a California corporation,
its Manager

By: _____

Name: _____

Its: _____

EXHIBIT A

PUBLIC FINANCING ADDENDUM

THIS PUBLIC FINANCING ADDENDUM (this "**Addendum**") is executed this ____ day of _____, 20__, by _____, ("**Landlord**" or "**Owner**"), _____ ("**Tenant**") and _____ ("**Guarantor**") with respect to and forming a part of that certain LEASE AGREEMENT (the "**Lease**") dated _____, 20__, for the premises commonly known as _____ (the "**Premises**") in the retail center commonly known as _____ located in the City of Wheat Ridge (the "**Center**").

Recitals

This Addendum is made with respect to the following facts:

A. Longs Peak Metropolitan District (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado (the "**State**") and has been organized under State law to facilitate the financing, acquisition and construction of public improvements needed for the development of the Center and other real property within the boundaries of the District (the "**Public Improvements**").

B. In connection with the financing for the Public Improvements, the Premises are subject to:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,
2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;
3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;
4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

(Collectively, the "**PIF Covenants**").

The PIF Covenants impose on each "Retailer" within the Center the requirement to collect and remit a "Public Improvement Fee" on all "Admissions Sales", "Lodging Sales" and "Retail Sales" (collectively, the "**PIF Sales**") for the use and benefit of the Owner and District for the purposes described in the PIF Covenants.

Addendum

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Defined Terms. Each initially capitalized term used in this Addendum, unless otherwise defined in this Addendum, shall have the meaning set forth for the term in the PIF Covenants.

2. Tenant's Obligations under PIF Covenants.

2.1 Tenant acknowledges that it has received and read the PIF Covenants. Tenant is a Retailer for the purposes of the PIF Covenants and is subject to all terms, conditions, obligations and restrictions imposed on and applicable to Retailers under the PIF Covenants with respect to the Premises and PIF Sales transactions initiated, consummated, conducted or transacted or otherwise occurring from or within any portion of the Premises. Without limiting the generality of the immediately preceding sentence, Tenant shall impose and collect the Public Improvement Fee on all PIF Sales transactions and shall pay all Public Improvement Fee revenues to the Collection Agent, unless otherwise directed by the District, in accordance with the requirements of the PIF Covenants.

2.2 Tenant further acknowledges that if Tenant authorizes any other Retailer to possess or occupy any portion of the Premises, subject in any case to the terms and conditions of the Lease, Tenant will then be an Occupant for the purposes of the PIF Covenants, and will be subject to all terms, conditions, obligations and restrictions imposed on and applicable to Occupants under the PIF Covenants, with respect to such portion of the Premises.

2.3 No default by Landlord shall entitle Tenant to any offset, deduction or other defense to Tenant's payment of all Public Improvement Fees due under the PIF Covenants.

3. Waiver of Confidentiality.

3.1 Tenant specifically authorizes the Collection Agent, Owner, District, any Bond Trustee and any Person designated by the District and the Collection Agent to:

(a) audit Tenant's books and records with respect to the Premises to determine compliance with Tenant's obligations to collect and remit Public Improvement Fees in accordance with the PIF Covenants; and

(b) release Tenant's Confidential Information to Landlord, the Collection Agent, the District, any Bond Trustee and owners and prospective purchasers of the Bonds for the purposes described in the PIF Covenants. Tenant acknowledges that Landlord shall maintain the confidentiality of Tenant's Confidential Information delivered to Landlord, to the extent permitted or required by law, and the District shall cause Tenant's Confidential Information delivered to the District, the Collection Agent, and any Bond Trustee or prospective purchasers of the Bonds to be maintained as confidential in accordance with the PIF Covenants and to the extent permitted or required by law.

3.2 All Reports made or provided by Tenant shall be maintained by Tenant for at least three years from the date of submission thereof to the Collection Agent, the City, the County and/or the State.

3.3 Tenant's authorization of the Collection Agent, the Owner, the District and any Bond Trustee under Section 3.1 shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, and such authorization shall terminate on the third anniversary of the earlier to occur of the date of termination of any such lease or the PIF Termination Date.

4. Remedies.

4.1 Tenant acknowledges that Landlord, the District, the Collection Agent and any Bond Trustee, or any Person designated by any of them, shall have a direct right of action and full right and authority to enforce Tenant's obligations under the PIF Covenants, including the right to all remedies provided under the PIF Covenants, for any default by Tenant under the terms and conditions of the PIF Covenants.

4.2 Tenant's default under the terms and conditions of the PIF Covenants shall be an event of default under the Lease, and, in addition to the remedies provided in the PIF Covenants, Landlord shall have all remedies available under the Lease for any default by Tenant under the PIF Covenants.

5. General Acknowledgements.

5.1 Tenant acknowledges that the provisions of the PIF Covenants pertaining to Retailers have been or will be agreed to by Declarant, the District and any Bond Trustee, and that Declarant, the District and, if required by the Bond Indentures, any Bond Trustee are or will be relying upon the PIF Covenants in taking certain actions with respect to the Public

Improvement Fee, the Bond Financing, the undertaking of the acquisition, construction and completion of the Public Improvements, and the incurrence of the Public Improvements Costs with the express understanding and condition that the provisions of the PIF Covenants pertaining to Retailers will not be amended, modified or waived without the prior written consent of Declarant, the District and any Bond Trustee. Accordingly, Tenant agrees that no amendment or modification will be made to, nor any waiver made or accepted by Tenant with respect to, the provisions of the PIF Covenants that pertain to Retailers, and that any such purported amendment, modification or waiver will be void and of no force and effect, unless made with the prior written consent of Declarant, the District and any Bond Trustee.

5.2 Tenant acknowledges that the Public Improvement Fee is not a tax in any form and that the authority of the Collection Agent and others to receive the Public Improvement Fee is derived through the PIF Covenants and the Bond Indentures.

Landlord and Tenant have executed this Addendum as of the date set forth in the introductory paragraph of this Addendum.

LANDLORD:

_____, a _____

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

PIF COLLECTING AGENT AGREEMENT

This **PIF COLLECTING AGENT AGREEMENT** (the "**Agreement**") is effective ~~2018~~September 16, 2019, among the **LONGS PEAK METROPOLITAN DISTRICT** (the "**District**"), a quasi-municipal corporation and political subdivision of the State of Colorado ("**State**"), **EVERGREEN- CLEAR CREEK CROSSING, L.L.C.**, an Arizona limited liability company (the "**Developer**"), and the **CITY OF WHEAT RIDGE** (the "**City**"), a home rule city and political subdivision of the State.

RECITALS

A. The District was formed to provide Public Improvements and services for development of property within and without its boundaries.

B. The District, Developer and the City entered into a Public Finance Agreement (the "**PFA**"), dated July 9, 2018, ~~to provide~~which provides for Public Improvement Fees (the "**PIFs**") to be imposed on property by means of a covenant that runs with the land and applicable to activity conducted within a project known as Clear Creek Crossing (the "**CCC Project**") to support District bonds for the construction of Public ~~Infrastructure~~Improvements all as defined in the PFA (the "**District Bonds**").

C. The Public Infrastructure to be constructed by the District will touch and concern the land and will benefit the CCC Project and surrounding property.

D. The District will enter into one or more agreements with a trustee (the "**Trustee**") concerning receipt of funds generated under the PFA and to apply those funds to payments on District Bonds and for the benefit of the Public Improvements (the "**Bond Indenture**").

E. The Developer has recorded against the CCC Project property:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. ~~=~~2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

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2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. ~~=~~2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

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3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. ~~=~~2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

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4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing ~~Admission~~Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

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5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

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6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

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(the "**PIF Covenants**"), pursuant to which a PIF will be imposed, and funds collected and paid (the "**PIF Revenue**").

F. The City regularly collects taxes pursuant to the Wheat Ridge Code of Laws and all regulations promulgated thereunder (the "**Tax Ordinance**") and is willing to collect the PIF Revenue on behalf of the District and the Developer to facilitate the completion of the Public Improvements, which will be beneficial to the City and its citizens.

G. The parties acknowledge that (i) the PIFs are a charge imposed pursuant to the PIF Covenants for the benefit of the CCC Project and not through the exercise of any power by the City; (ii) the PIF Revenue is not tax revenue in any form; (iii) the PIF Revenue is to be pledged and used for the payment of the principal of and interest on the District Bonds or as otherwise provided in the PFA and Bond Indentures; and (iv) the authority of the City to collect the PIFs is derived through this Agreement and the City's authority is limited by and enforceable only in accordance with the terms of this Agreement.

H. The District Bonds do not constitute obligations, indebtedness or multiple fiscal year financial obligations of the City and do not constitute or give rise to a pecuniary liability of the City, or a charge against its general credit or taxing powers. The City has no obligations of any nature to pay the principal of or interest on the District Bonds.

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual agreements, promises and covenants herein contained, the parties agree as follows:

ARTICLE I DEFINITIONS

Section 1.1. DEFINITIONS. Any capitalized term not defined in this Agreement but defined in the PIF Covenants shall have the meaning given to such term in the PIF Covenants. If any term is defined in both the PIF Covenants and this Agreement, the definition set forth herein shall control for all purposes of this Agreement. The following capitalized terms shall have the following meanings unless the context requires otherwise.

"**Agreement**" means this PIF Collecting Agent Agreement as amended and supplemented from time to time.

"**City**" has the meaning set forth in the introductory paragraph.

"**Collecting Agent**" means the City acting as the agent of the District.

"**Collection Fee**" means a fee equal to two percent (2%) of the PIF Revenue.

"**Information**" means any written information or guidelines prepared by the District and the Collecting Agent regarding the calculation, payment and reporting of the PIFs, as amended and supplemented from time to time.

"**PIF Sales**" means the "Admissions Sales", "Lodging Sales" and "Retail Sales" defined in the PIF Covenants.

"**Public Improvements**" has the meaning set forth in the PFA.

"**Report Recipients**" are the City, Trustee and District.

"**Waiver of Confidentiality**" means a waiver of confidentiality agreement that is substantially similar in form and substance to the form of the Public Financing Addendum for tenant Retailers, which is attached hereto as Exhibit A and incorporated herein by this reference for all purposes, as amended and supplemented from time to time.

ARTICLE II PUBLIC IMPROVEMENT FEES

Section 2.1. Payment of Public Improvement Fees. The PIFs shall be determined, calculated, adjusted and payable by Retailers in accordance with the terms and provisions of the PIF Covenants. The procedures for the collection, segregation, remittance, payment, delinquencies and reporting (but not for the calculation) of the PIFs shall be substantially similar to those procedures followed by the City for the collection of the related taxes or as otherwise supplemented or provided in the Information.

Section 2.2. Remittance of Public Improvement Fees. PIFs shall be paid to the City as the Collecting Agent substantially as set forth below:

a. No later than the monthly date that taxes are payable, each Retailer shall remit all PIF amounts payable pursuant to the PIF Covenants to the Collecting Agent on reporting forms provided by the Collecting Agent.

b. All adjustments, including refunds, additions or other modifications, to PIFs payable shall be processed in a manner substantially similar to the process followed by the City for an adjustment of the related City tax. If an adjustment increases the amount of the PIF or results in a refund of such PIF, the payer shall claim any credit or pay additional PIFs in the next monthly reporting period utilizing the City's standard reporting and remittance forms.

ARTICLE III COLLECTION OF PUBLIC IMPROVEMENT FEES

Section 3.1. Appointment of City as Collecting Agent.

a. The District and Developer appoint the City as Collecting Agent for purposes of receiving, collecting, administering, remitting and disbursing all PIF Revenue paid pursuant to the PIF Covenants during the term of this Agreement. City accepts the responsibility of receiving the PIF Revenue and, after deduction of the Collection Fee, depositing the PIF Revenue within ~~three~~ (3) five (5) business days after receipt and processing as directed by the District, and upon payment in full or defeasance of the District Bonds, as directed by the Developer.

b. PIF Revenue constitutes funds collected for another government within the meaning of *Article X, Section 20*, of the *Colorado Constitution*. The City is not the agent of any person other than the District and Developer and shall have only those responsibilities expressly stated and in written correspondence from the District or Developer, as applicable, directing payment or deposit of the PIF Revenue. The obligations of the City under this Agreement shall not constitute a multiple fiscal year direct or indirect debt or other financial obligations of the City, and the payment of any costs incurred or to be incurred by the City in performing its obligations hereunder shall be subject to annual appropriation by the City Council.

c. The ~~PIFs~~ PIF Revenue collected pursuant to this Agreement will be utilized as provided in the PFA and the Bond Indentures, and, after deduction of the Collection Fee, shall be distributed in accordance with the terms of this Agreement.

Section 3.2. Covenant of the Parties.

a. Each party hereby represents and warrants to and for the benefit of the other party:

(1) That it has full power and legal authority to enter into this Agreement;

(2) That it has taken or performed all acts or actions that may be required by its governing documents, statute or charter to confirm its authority to execute, deliver and perform each of its obligations under this Agreement; and

(3) That neither the execution and delivery of this Agreement, nor compliance with any of the terms, covenant or conditions of this Agreement will result in a violation of or default under any other agreement or contract to which it is a party or by which it is bound.

b. From time to time but not later than the last day of each calendar month commencing with the date of execution of this Agreement, each party will, to the extent that it has actual knowledge thereof, provide to the other party a current listing of the name and address of each person or entity required to pay PIFs (the “**PIF Obligors**”) and the date of opening of the retailer’s store or operation subject to the PIF Covenants.

c. The District will file, or cause to be filed, with the Collecting Agent a Waiver of Confidentiality executed by each PIF Obligor, authorizing the Collecting Agent to share information contained in the reports, returns and other documents delivered by the PIF Obligor. The Collecting Agent shall be responsible for providing reports to the Report Recipients only for PIF Obligors for whom the District has provided a Waiver of Confidentiality, and to the extent permitted by law, the District shall indemnify and hold the City harmless from any liability that may arise from the release of such reports to the Report Recipients.

d. The parties shall cooperate with each other and shall undertake any reasonably necessary action that is required to support or assist in the collection, remittance and reporting of all PIFs.

Section 3.3. Provision of PIF Information to PIF Obligors. Within ten days after receipt of written notice from the District of any new PIF Obligor, the Collecting Agent shall provide the PIF Obligor: (i) all Information or policies and procedures adopted by the District regarding the calculation, payment and reporting of PIFs, and (ii) all reporting forms, procedures and other instructions concerning the collection and remittance of PIFs to the Collecting Agent, and all information required under the PIF Covenants

Section 3.4. Collection and Reporting of PIF Revenues.

a. The parties shall take the following specific actions in connection with the collection and reporting of PIF Revenues:

(1) The Collecting Agent shall receive PIF Revenue remitted by PIF Obligors and, after deduction of the Collection Fee, transfer, remit to and deposit it within five (5) business days after receipt and processing thereof as directed in writing by the District or Developer, as applicable.

(2) The Collecting Agent shall receive from PIF Obligors all reports, returns and other documents delivered pursuant to the PIF Covenants. If a Waiver of Confidentiality has been provided, the Collecting Agent shall, subject to the terms of Section 3.2.c, make copies of all reports, returns and other documents available to the ~~District and any Trustee~~Report Recipients.

(3) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a first delinquency notice to any PIF Obligor (i) that fails to timely remit ~~PIFs~~PIF Revenue during the preceding collection month or (ii) that the Collecting Agent has reasonably determined to have paid an incorrect amount for the preceding collection month. The Collecting Agent shall send copies of all first delinquency notices to the District, together with a report of the amount of such delinquency, and the period for which such PIF Obligor is delinquent.

(4) Following the procedures and timelines applied by the City for the collection of taxes, the Collecting Agent shall send a second delinquency notice to any PIF Obligor that has not paid any delinquent PIF. The Collecting Agent shall send copies of all second delinquency notices to the District, together with a report listing the name of each PIF Obligor to whom the second delinquency notice was sent, the amount of such delinquency, and the period of delinquency.

(5) The Collecting Agent is not obligated to distribute additional delinquency notices after the second delinquency notice.

(6) In accordance with terms mutually acceptable to and subsequently approved in writing, the Collecting Agent, Developer or District may initiate, pursue and enforce, or cause to be pursued and enforced, civil actions or other judicial proceedings to collect any delinquent PIFs, interest or penalties due, or to enforce any other obligation under the PIF Covenants. Otherwise, the City shall have no obligation to undertake any enforcement action of any nature.

(7) Subject to subparagraph b. of this Section 3.4, the Collecting Agent shall prepare and deliver to the District and Developer, on or as soon as practicable after the 45th day following the end of each collection month, a report (i) describing the amount of the respective PIF Sales and the amount of PIF Revenue received by the Collecting Agent from each PIF Obligor during such collection month and for the calendar year to date, (ii) describing the amount of PIF Revenue received since the last report representing delinquent PIF Revenue, including interest and penalties, and the PIF Obligors to whom such delinquent fees are attributable, and (iii) identifying each PIF Obligor who is delinquent in submitting reports, returns and other documents.

(8) The Collecting Agent shall, within 90 days after the end of each calendar year, provide the District and Developer an annual unaudited report setting forth the PIF Revenue received by the Collecting Agent for the preceding calendar year. At reasonable times during regular business hours, the District, Developer, any Trustee or their designee are authorized to audit, or cause audits to be conducted of, the Collecting Agent's books and records. The Collecting Agent shall, within 60 days after notice, pay any deficiency as directed by the District or Developer, together with interest thereon (subject to appropriation by the City Council) at a rate equal to one percent (1%) of the prime rate published in the Wall Street Journal on the date of discovery of such deficiency and notice thereof to the Collecting Agent (not to exceed eighteen percent (18%)).

b. All reports, information or data concerning PIF Sales or PIF Revenue received by the Collecting Agent shall remain confidential, unless otherwise required to be made public by law. All information shall be used only for purposes of collecting PIFs or enforcing PIF Covenants, monitoring compliances, disseminating information to prospective purchasers or owners of the District Bonds, or as may otherwise be authorized under the PIF Covenants and shall be subject to the terms of Section 3.2.c.

Section 3.5. Remittance of Public Improvement Fees. All PIF Revenue shall, after deduction of the Collection Fee, be transferred and remitted as directed by the District or Developer, as applicable. The Collecting Agent shall have no responsibility or liability for the application of PIF Revenue to District Bonds or other purposes.

Section 3.6. Bankruptcy of Retailer. In the event either party to this Agreement receives notice of any action in the bankruptcy of any PIF Obligor, such party shall, as soon as practicable, give notice or convey copies of such notice which it received to the other party.

Section 3.7. Collection Fee and Reimbursable Expenses. In consideration of its performance of collection services hereunder, the Collecting Agent shall retain the Collection Fee on PIF Revenue collected.

ARTICLE IV MISCELLANEOUS TERMS

Section 4.1. Perfection of Security Interests. The District and the City elect to have all provisions of Section 11-57-201, et seq., C.R.S., as amended, apply to the security interest of such parties in the PIFs; provided, however, that such election shall not operate to modify or limit the rights conferred on the District by any provision of State law.

Section 4.2. Beneficiaries of Public Improvement Fees. Notwithstanding the appointment of the City as the Collecting Agent, the District and Developer are the primary beneficiaries of the PIFs in accordance with the terms of the PIF Covenants, the PFA and Bond Indentures.

Section 4.3. Sovereign Powers and Immunities. Nothing in this Agreement shall be construed as diminishing, delegating or otherwise restricting any of the sovereign powers or immunities of the City or District.

Section 4.4. Resignation; Removal; Assignment. The City may resign as Collecting Agent by submitting a notice of resignation to the District no less than 60 days before the resignation is intended to take effect. The resignation shall be effective on the termination date set forth in such notice. The City may be removed as Collecting Agent by the District or Developer at any time to become effective not earlier than 60 days after notice to the City. If the City has breached a term or condition of this Agreement, the District or Developer may remove the City as Collecting Agent, effective immediately. This Agreement shall not be assigned by either party other than to a successor by operation of law or with the prior written consent of the other parties.

Section 4.5. Notice. All notices, certificates or other communications required to be given hereunder shall be in writing and shall be deemed given when delivered in person, or by prepaid overnight express mail or a national courier service, or mailed by certified or registered mail, postage prepaid, addressed as follows:

To the City:

City Manager
City of Wheat Ridge
7500 West 29th Avenue
Wheat Ridge, CO 80033
Email: pgoff@ci.wheatridge.co.us pgoff@ci.wheatridge.co.us

To the District:

Seter & Vander Wall, P.C.
7400 East Orchard Road, Suite 3300
Greenwood Village, CO 80111
Attn: Kim J. Seter, Esq.
Email: kseter@svwpc.com kseter@svwpc.com

To the Developer:

Evergreen-Clear Creek Crossing, L.L.C.
1873 S. Bellaire Street, Ste. 1200
Denver, CO 80222
Attn: Tyler Carlson
Email: tcarlson@evgre.com

with copy to:

2390 E. Camelback Road, Ste. 410
Phoenix, AZ 85016
Attn: Laura Ortiz
Email: lortiz@evgre.com

The parties may by written notice designate any additional or different address to which subsequent notices, certificates or other communications will be sent.

Section 4.6. No Third Party Beneficiaries. There are no intended beneficiaries of this Agreement except the City, Developer and the District. Nothing contained in this Agreement shall give or allow any claim or right of action by any person with respect to this Agreement.

Section 4.7. Binding Effect. This Agreement shall inure to the benefit of and shall be binding upon the parties and their duly authorized successors and assigns.

Section 4.8. Amendment. This Agreement may only be amended, changed, modified or altered by an instrument in writing duly executed by each party.

Section 4.9. Computation of Time. In computing a period of days, the first day shall be excluded and the last day shall be included. If the last day of any period is not a business day, the period shall be extended to include the next succeeding business day. If a number of months is to be computed by counting the months from a particular day, the period shall end on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period shall end on the last day of that month.

Section 4.10. Payments Due on a Day Other Than a Business Day. If the date for making any payment or the last day for performance of any act or the exercising of any right as provided in this Agreement shall be a day other than a business day, such payment may be made, or such act performed, or such right may be exercised on the next succeeding business day with the same force and effect as if done on the nominal date provided in this Agreement or the PIF Covenants.

Section 4.11. Severability. In the event that any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof which shall be enforced to implement the manifest intent hereof.

Section 4.12. Execution in Counterparts. This Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 4.13. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

Section 4.14. No Indemnification by City. The City shall have no obligation to indemnify, hold harmless or defend the District, Developer, any District Bond Trustee or any other person for any purpose whatsoever. The only remedies of the parties are set forth in Section 4.15.

Section 4.15. Default and Remedies. If any party fails to perform any of its responsibilities, obligations or agreements to be performed in accordance with the terms and provisions of this Agreement, and if such failure of performance continues for a period of 30 days following notice of default from another party (or such additional period of time as may be reasonably necessary to cure such default as long as the curative action is commenced within such 30 day period and is diligently and continuously pursued to completion), then any non-defaulting party may initiate a court action (i) to enjoin such failure of performance, (ii) to recover damages, and (iii) to seek any other remedy available at law or in equity, including an action for specific performance. The prevailing party in any court action shall be entitled to an award of costs and reasonable attorney fees. No remedy provided under this Agreement shall be required to be exercised as a prerequisite to seeking any other relief to which such party may

then be entitled. All rights and remedies under this Agreement are cumulative, and the exercise of any one or more of such rights and remedies shall not preclude the exercise of any other right or remedy for any default at the same or a different time. Any delay in asserting any right or remedy under this Agreement shall not operate as a waiver of any such right or limit such right in any manner.

Section 4.16. Captions. The captions or headings herein are for convenience only and in no way define, limit or describe the scope or intent of any provisions or Section of this Agreement.

This PIF Collecting Agent Agreement is entered into and executed by the parties as of the date set forth above.

**LONGS PEAK METROPOLITAN
DISTRICT**

By: _____

ATTEST:

By: _____

CITY OF WHEAT RIDGE

By: _____
Bud Starker, Mayor

ATTEST:

By: _____
Office of the City Clerk

APPROVED AS TO FORM:

Gerald E. Dahl, City Attorney

DEVELOPER

**EVERGREEN-CLEAR CREEK
CROSSING, L.L.C.,**
an Arizona limited liability company

By: Evergreen Development Company-2016, L.L.C.,
an Arizona limited liability company,
its Manager

By: Evergreen Devco, Inc.,
a California corporation,
its Manager

By: _____
Name: _____
Its: _____

EXHIBIT A

PUBLIC FINANCING ADDENDUM

THIS PUBLIC FINANCING ADDENDUM (this "**Addendum**") is executed this ____ day of _____, 20__, by _____, ("**Landlord**" or "**Owner**"), _____ ("**Tenant**") and _____ ("**Guarantor**") with respect to and forming a part of that certain LEASE AGREEMENT (the "**Lease**") dated _____, 20__, for the premises commonly known as _____ (the "**Premises**") in the retail center commonly known as _____ located in the City of Wheat Ridge (the "**Center**").

Recitals

This Addendum is made with respect to the following facts:

A. Longs Peak Metropolitan District (the "**District**") is a quasi-municipal corporation and political subdivision of the State of Colorado (the "**State**") and has been organized under State law to facilitate the financing, acquisition and construction of public improvements needed for the development of the Center and other real property within the boundaries of the District (the "**Public Improvements**").

B. In connection with the financing for the Public Improvements, the Premises are subject to:

1. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Credit Public Improvement Fee at Reception No. 2018065896 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

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2. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Credit Public Improvement Fee at Reception No. 2018065894 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

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3. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Admissions Credit Public Improvement Fee at Reception No. 2018065898 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

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4. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing ~~Admission~~Admissions Add-On Public Improvement Fee at Reception No. 2018065897 in the real property records of the Clerk and Recorder of Jefferson County, Colorado;

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5. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Lodging Add-On Public Improvement Fee at Reception No. 2018065895 in the real property records of the Clerk and Recorder of Jefferson County, Colorado; and,

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6. A Declaration of Covenants Imposing and Implementing the Evergreen-Clear Creek Crossing Retail Add-On Public Improvement Fee at Reception No. 2018065893 in the real property records of the Clerk and Recorder of Jefferson County, Colorado

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(Collectively, the "**PIF Covenants**").

The PIF Covenants impose on each "Retailer" within the Center the requirement to collect and remit a "Public Improvement Fee" on all "Admissions Sales", "Lodging Sales" and "Retail Sales" (collectively, the "**PIF Sales**") for the use and benefit of the Owner and District for the purposes described in the PIF Covenants.

Addendum

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Landlord and Tenant agree as follows:

1. Defined Terms. Each initially capitalized term used in this Addendum, unless otherwise defined in this Addendum, shall have the meaning set forth for the term in the PIF Covenants.

2. Tenant's Obligations under PIF Covenants.

2.1 Tenant acknowledges that it has received and read the PIF Covenants. Tenant is a Retailer for the purposes of the PIF Covenants and is subject to all terms, conditions, obligations and restrictions imposed on and applicable to Retailers under the PIF Covenants with respect to the Premises and PIF Sales transactions initiated, consummated, conducted or transacted or otherwise occurring from or within any portion of the Premises. Without limiting the generality of the immediately preceding sentence, Tenant shall impose and collect the Public Improvement Fee on all PIF Sales transactions and shall pay all Public Improvement Fee revenues to the Collection Agent, unless otherwise directed by the District, in accordance with the requirements of the PIF Covenants.

2.2 Tenant further acknowledges that if Tenant authorizes any other Retailer to possess or occupy any portion of the Premises, subject in any case to the terms and conditions of the Lease, Tenant will then be an Occupant for the ~~for the~~ purposes of the PIF Covenants, and will be subject to all terms, conditions, obligations and restrictions imposed on and applicable to Occupants under the PIF Covenants, with respect to such portion of the Premises.

2.3 No default by Landlord shall entitle Tenant to any offset, deduction or other defense to Tenant's payment of all Public Improvement Fees due under the PIF Covenants.

3. Waiver of Confidentiality.

3.1 Tenant specifically authorizes the Collection Agent, Owner, District, any Bond Trustee and any Person designated by the District and the Collection Agent to:

(a) audit Tenant's books and records with respect to the Premises to determine compliance with Tenant's obligations to collect and remit Public Improvement Fees in accordance with the PIF Covenants; and

(b) release Tenant's Confidential Information to Landlord, the Collection Agent, the District, any Bond Trustee and owners and prospective purchasers of the Bonds for the purposes described in the PIF Covenants. Tenant acknowledges that Landlord shall maintain the confidentiality of Tenant's Confidential Information delivered to Landlord, to the extent permitted or required by law, and the District shall cause Tenant's Confidential Information delivered to the District, the Collection Agent, and any Bond Trustee or prospective purchasers of the Bonds to be maintained as confidential in accordance with the PIF Covenants and to the extent permitted or required by law.

3.2 All Reports made or provided by Tenant shall be maintained by Tenant for at least three years from the date of submission thereof to the Collection Agent, the City, the County and/or the State.

3.3 Tenant's authorization of the Collection Agent, the Owner, the District and any Bond Trustee under Section 3.1 shall be in effect for any period of time during which a lease is in effect between the Tenant and Landlord, regardless of whether an initial term, a separate term or extension thereof, and such authorization shall terminate on the third anniversary of the earlier to occur of the date of termination of any such lease or the PIF Termination Date.

4. Remedies.

4.1 Tenant acknowledges that Landlord, the District, the Collection Agent and any Bond Trustee, or any Person designated by any of them, shall have a direct right of action and full right and authority to enforce Tenant's obligations under the PIF Covenants, including the right to all remedies provided under the PIF Covenants, for any default by Tenant under the terms and conditions of the PIF Covenants.

4.2 Tenant's default under the terms and conditions of the PIF Covenants shall be an event of default under the Lease, and, in addition to the remedies provided in the PIF Covenants, Landlord shall have all remedies available under the Lease for any default by Tenant under the PIF Covenants.

5. General Acknowledgements.

5.1 Tenant acknowledges that the provisions of the PIF Covenants pertaining to Retailers have been or will be agreed to by Declarant, the District and any Bond Trustee, and that Declarant, the District and, if required by the Bond Indentures, any Bond Trustee are or will be relying upon the PIF Covenants in taking certain actions with respect to the Public

Improvement Fee, the Bond Financing, the undertaking of the acquisition, construction and completion of the Public Improvements, and the incurrence of the Public Improvements Costs with the express understanding and condition that the provisions of the PIF Covenants pertaining to Retailers will not be amended, modified or waived without the prior written consent of Declarant, the District and any Bond Trustee. Accordingly, Tenant agrees that no amendment or modification will be made to, nor any waiver made or accepted by Tenant with respect to, the provisions of the PIF Covenants that pertain to Retailers, and that any such purported amendment, modification or waiver will be void and of no force and effect, unless made with the prior written consent of Declarant, the District and any Bond Trustee.

5.2 Tenant acknowledges that the Public Improvement Fee is not a tax in any form and that the authority of the Collection Agent and others to receive the Public Improvement Fee is derived through the PIF Covenants and the Bond Indentures.

Landlord and Tenant have executed this Addendum as of the date set forth in the introductory paragraph of this Addendum.

LANDLORD:

_____, a _____

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

PIF Collecting Agent Agreement

Longs Peak Metropolitan District

ATTACHMENT 4

Purpose of Public Improvement Fee (PIF)

- A PIF is the product of a covenant imposed on land, which requires that a fee be charged and collected against transactions that occur on the land. The charge and collection is administered in the same manner as the City's collection of sales or other taxes on transactions.
- Although the PIFs originate from private covenants, PIF revenue serves a public purpose and is limited to providing public improvements for the Clear Creek Crossing Project, including the Westbound I-70/Clear Creek Crossing Drive Hook Ramps, and other approved costs consistent with the PFA and PIF covenants.

Advantages of City as Collection Agent

- Eliminates duplicative collection efforts
- City has more experience/expertise collecting charges
- More efficient and seamless administration for retailers
- Collection service charges (est. \$20,000+ annually) paid to City instead of a private third party agent

Advantages of City as Collection Agent

- As a long-term partner in the Clear Creek Crossing Project, the City is best suited to provide reliable, permanent and transparent collection services.

Questions?

