



# **WESTMINSTER**

**COLORADO**

## **CITY COUNCIL MEETING**

**MAY 19, 2025 at 7:00 PM**

- A. Authorize a Contract with Burns and McDonnell Engineering Company, Inc. for Design of the Lowell Boulevard Waterline and Critical Sewers Replacement Project



## Agenda Memorandum

Agenda Item – 8.A.

City Council Meeting  
May 19, 2025



### **Strategic Priority 5: Resilient Infrastructure**

Maintain and invest in resilient infrastructure that creates the highest return for safety, community connectivity, enjoyment of life, and local economic success.

**Subject:** Authorize a Contract with Burns and McDonnell Engineering Company, Inc. for Design of the Lowell Boulevard Waterline and Critical Sewers Replacement Project

**Prepared By:** Andrew Walsh, Principal Engineer

### **Recommended City Council Action:**

Authorize the City Manager to execute a contract with Burns and McDonnell Engineering Company, Inc. for design of the Lowell Boulevard Waterline and Critical Sewers Replacement capital project in the amount of \$1,266,645, plus contingency in the amount of \$189,997, for a total authorized expenditure with this firm of \$1,456,642.

### **Summary Statement:**

- The purpose of this project is to replace aged water and sanitary sewer mains in the area of Lowell Boulevard and 72nd Avenue as shown on Attachment A. These utilities serve a historic area of the city, have a history of breaks, and are nearing or are at the end of their useful lives.
- Burns and McDonnell Engineering Company, Inc. (Burns and McDonnell) was selected through a competitive proposal process to design the water and sewer replacements. Staff recommends awarding the design contract to Burns and McDonnell based on their qualifications, competitive fees, and successful performance on other recent projects completed with the City.
- Design will commence following City Council approval and is anticipated to be completed within 12 months. Due to the potential higher risk for utility conflicts and environmental concerns working in a historic area of the city, Staff is requesting a 15 percent design contingency. Bidding for the construction phase will follow the completion of design, and Staff will return to City Council for consideration of the construction contract and construction-related services.

- Adequate funds were budgeted for and are available for this project utilizing Utility Capital Improvement funds. The City plans to apply awarded FY24 Congressionally Directed Funds during the construction phase of the project.

**Fiscal Impact:**

\$1,456,642 in expenditures

**Source of Funds:**

Utility Capital Improvement Funds – Lowell 72nd Waterline and Historic Westminster Sewer Interceptor Sewers Accounts

**Policy Issue(s):**

Should City Council authorize an engineering services contract with Burns and McDonnell to design the Lowell Boulevard Waterline and Critical Sewers Replacement Project?

**Alternative(s):**

City Council could choose not to authorize a contract with Burns and McDonnell. This alternative is not recommended; Staff has determined through the competitive procurement process that they provide the best value to the City based on their approach, qualifications, experience with projects of a similar size and scope, and experience with federally funded projects. Repair and replacement of the water and sewer mains are a priority so the City can continue to maintain reliable service.

**Background Information:**

The City of Westminster maintains over 560 miles of water distribution mains and 400 miles of sanitary sewer mains. Over time, water and sewer mains become aged, develop leaks or defects, and require replacement.

In 2014, the City hired HDR Engineering, Inc. to evaluate the condition of the water distribution system pipes. The analysis included the following: likelihood and consequence of failure, age, break history, and material. Two of the highest priorities in the City for water main replacement are the 16-inch water transmission main in Lowell Boulevard between 72nd Avenue and 80th Avenue and the 16-inch water transmission main in 72nd Avenue between Lowell Boulevard and Newton Street. The locations of these mains are shown on Attachment A. The cast iron water mains were constructed in 1959 and have a history of breaks.

In 2020, the City hired Wenk Associates, Inc. (Wenk) to evaluate critical sewers for repair or replacement in the Little Dry Creek sewer basin. In late 2020, Stantec, Inc. acquired Wenk and, through its work, ten sewer mains were prioritized for repair or replacement, eight of which were added to this project and are shown on Attachment A.

Requests for Proposals (RFPs) for the design of the Lowell Boulevard Waterline and Critical Sewer Replacement Project were advertised on Bidnet, and 2,381 consulting firms were notified of this opportunity. The documents and plans received 91 downloads, and seven proposals were submitted. Of the submitted proposals, Staff evaluated and ranked the firms based on their approach, qualifications, experience with projects of a similar size and scope, and experience with federally funded projects. Following best practices under the guidance of the Procurement Division, each proposal was reviewed and ranked in priority based on qualifications, followed by a review of the fee

portion of the proposal. Burns and McDonnell received the highest score by the evaluation team based on their technical understanding of the project and experience on other federally funded projects.

As a result of the City's competitive proposal process, it is Staff's assessment that Burns and McDonnell provides the best value based on their qualifications of projects of a similar size and scope, competitive fees, and successful performance on other projects with the City. Their fee structure has been negotiated and falls within expectations of similar projects. It is recommended that Burns and McDonnell be awarded the contract for \$1,266,645, plus contingency in the amount of \$189,997, for a total authorized expenditure with this firm of \$1,456,642.

Design is anticipated to commence immediately following City Council approval and is anticipated to be completed within 12 months. Bidding for construction is anticipated to begin following design and is anticipated to take 18 months to complete.

The Strategic Priority of Resilient Infrastructure is met by investing in the City's water and sanitary sewer infrastructure such that a safe and reliable level of service to citizens is maintained.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Jody L. Andrews', with a long horizontal flourish extending to the right.

Jody L. Andrews  
City Manager

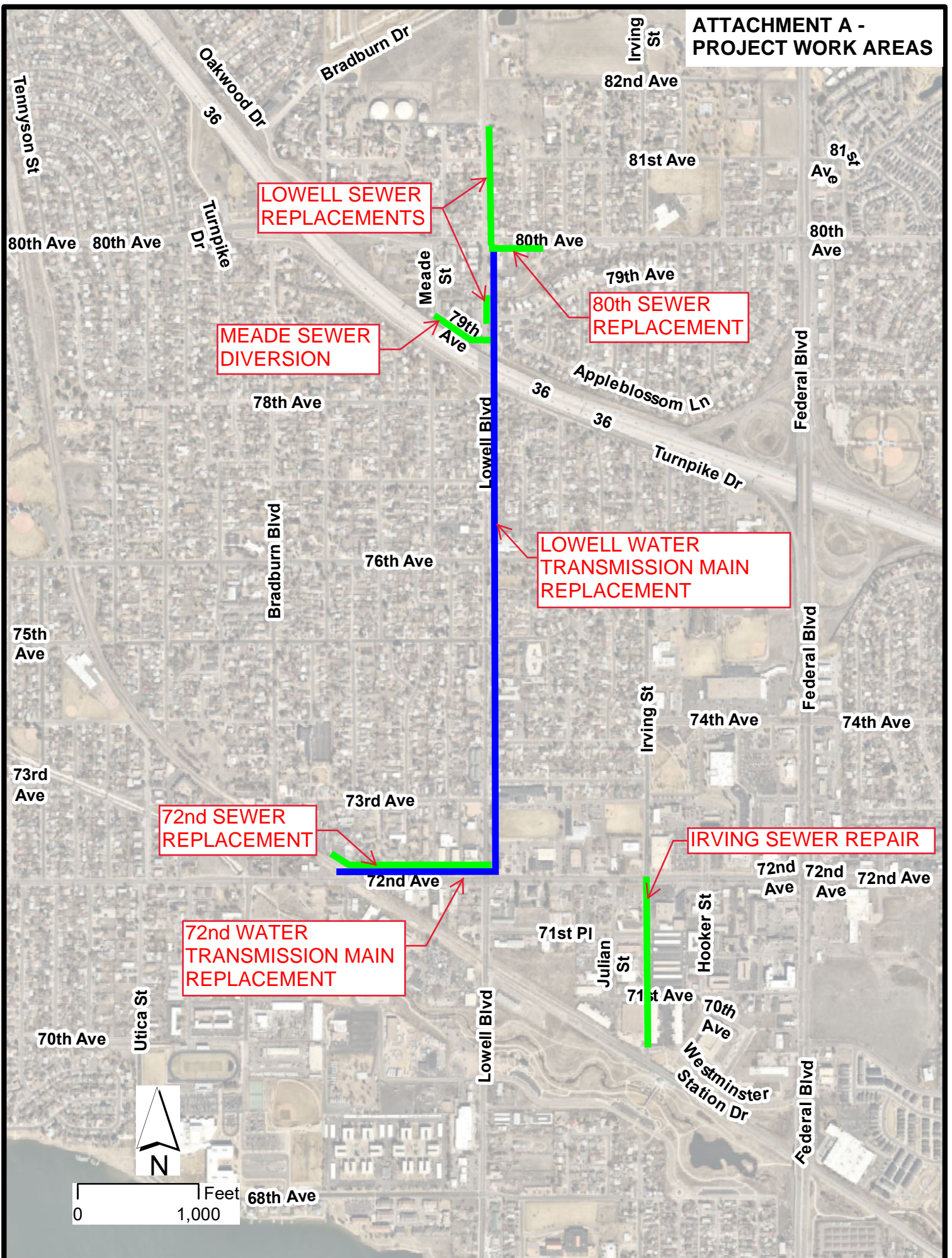
**Attachments:**

Attachment A – Overall Project Areas

Attachment B – Contract with Burns and McDonnell



ATTACHMENT A -  
PROJECT WORK AREAS



## **STANDARD FORM OF AGREEMENT FOR CONSTRUCTION DESIGN SERVICES**

THIS AGREEMENT is made on May 19, 2025, between the **CITY OF WESTMINSTER**, a home-rule municipal corporation organized pursuant to the laws of the State of Colorado, located at 4800 West 92nd Avenue, Westminster, Colorado, 80031 (the "Owner") and **Burns & McDonnell Engineering Company, Inc.** a corporation organized pursuant to the laws of the State of Missouri (the "Engineer") (collectively, the "Parties") for the following Project: **LOWELL BLVD WATERLINE & CRITICAL SEWER REPLACEMENT PROJECT**.

The Owner and the Engineer agree as set forth below.

### **ARTICLE 1**

#### **DEFINITIONS**

When used in this Agreement and the Contract Documents the following terms shall have the meanings assigned below. In addition, terms defined elsewhere in the Contract Documents shall carry their prescribed meaning herein and throughout the Contract Documents.

1.1 "Agreement" means and includes this document as well as all of the Contract Documents. This Agreement represents the entire and integrated agreement between the Parties hereto and supersedes all prior negotiations, representations, or agreements, either written or oral. This Agreement may be amended in writing only as permitted in paragraph 14.3 of this Agreement. Nothing contained in the Contract Documents shall create any contractual relationship between the Owner, any sub-consultant, or any supplier of equipment or materials.

1.2 "Basic Services" means the Engineer's services described in Attachment 1, "Scope of Services," attached hereto and incorporated herein by this reference as well as those services described in this Article 2 of the Agreement below. "Basic Services" includes normal civil, structural, mechanical and electrical engineering services as well as administration of the eventual Construction Contract. Services that are not "Basic Services" are "Additional Services."

1.3 "Contract Documents" means and includes all of the following:

1.3.1 This Standard form Agreement for Construction Design Services, including any exhibits (hereinafter the "Agreement") and all addenda thereto issued prior to and all written modifications agreed to and signed by both Parties after execution of the Agreement as required by paragraph 14.3 of this Agreement. The Contract Documents also consist of the following documents issued pursuant to this Agreement: Notice of Award, Notice to Proceed, Certificates of Insurance, and Tax-Exempt Certificates issued pursuant to this Agreement.

1.3.2 The following proposal documents: Request for Proposals; Invitation to Submit Proposals; Project Background, Description and Minimum Scope of Services; and Instructions and Proposal Requirements.

1.3.3 The Construction Contract and all Drawings, Specifications, Addenda issued prior to and Modifications issued after execution of the Construction Contract, as well as all other documents listed in the Construction Contract. A Modification is (1) a written amendment to the Construction Contract signed by both Parties, (2) a Change Order, (3) a Construction Change Directive, or (4) a written Order for a Minor Change in the Work approved by the Owner.

1.3.4 The bidding documents issued prior to the award of the Construction Contract, including: Notice to Bidders or Request for Bids; Instructions to Bidders; Bid Proposal; Bid Schedule; and Bid Bond. The Contract Documents also consist of the following documents issued pursuant to the Construction Contract: Notice of Award, Notice to Proceed; Performance Bond; Payment Bond; Certificates of Insurance; and Tax-Exempt Certificates.

1.4 “Construction Contract” means the eventual agreement by and between the Owner and a general contractor selected after bidding (hereinafter the “Contractor”) in the form specified and required by the Owner, which contract will be executed following Engineer’s completion of the design development phase contemplated by this Agreement. “Construction Contract” includes the general and special conditions to the Construction Contract and all specifications incorporated therein.

1.5 “Project” means the total construction of which the Work performed under the Contract Documents may be the whole or a part and which may include construction by the Owner or by separate contractors.

1.6 “Project Manager” means the City employee identified in paragraph 14.2 of this Agreement.

1.7 “Work” means the construction and services required by the Contract Documents, whether completed or partially completed, and includes all other labor, materials, equipment and services provided or to be provided by the Contractor to fulfill the Contractor’s obligations for the completed construction required by the Contract Documents. The Work may constitute the whole or a part of the project.

## **ARTICLE 2**

### **ENGINEER’S SERVICES AND RESPONSIBILITIES**

#### **2.1 SCHEMATIC DESIGN PHASE**

2.1.1 The Engineer shall review the program furnished by the Owner to ascertain the requirements of the Project and shall review its understanding of such requirements with the Owner.

2.1.2 The Engineer shall provide a preliminary evaluation of the program and the Project budget requirements, each in terms of the other.

2.1.3 The Engineer shall review with the Owner alternative approaches to design and construction of the Project.

2.1.4 Based on the mutually agreed upon program and Project budget requirements, the Engineer shall prepare, for approval by the Owner and in a format acceptable to the Owner, Schematic Design Documents consisting of drawings and other documents illustrating the scale and relationship of Project components.

2.1.5 The Engineer shall submit to the Owner a Statement of Probable Construction Cost based on current area, volume or other unit costs.

#### **2.2 DESIGN DEVELOPMENT PHASE**

2.2.1 In coordination with the Schematic Design Documents and any adjustments authorized by the Owner in the program or Project budget, the Engineer shall prepare, for approval by the Owner, Design



Development Documents consisting of drawings, outline specifications, and such renderings and models as may be authorized by Owner under Article 5.1.5, and other documents to fix and describe the size and character of the entire Project as to architectural, structural, mechanical and electrical systems, materials and such other elements as may be appropriate.

2.2.2 The Engineer shall submit to the Owner a further Statement of Probable Construction Cost.

## **2.3 CONSTRUCTION DOCUMENTS PHASE**

2.3.1 In coordination with the Design Development Documents and any further adjustments in the scope or quality of the Project or in the Project budget authorized by the Owner, the Engineer shall prepare, for approval by the Owner, Construction Documents consisting of Drawings and Specifications setting forth in detail the requirements for the construction of the Project.

2.3.2 The Engineer shall assist the Owner in the preparation of the necessary bidding information, bidding forms, the conditions of the Construction Contract, and the form of agreement between the Owner and the Contractor, with the understanding that the City's form of Construction Contract shall be used.

2.3.3 The Engineer shall advise the Owner of any adjustments to previous Statements of Probable Construction Cost indicated by changes in requirements or general market conditions.

2.3.4 The Engineer shall assist the Owner in connection with the Owner's responsibility for filing documents required for the approval of governmental authorities having jurisdiction over the Project.

## **2.4 BIDDING OR NEGOTIATION PHASE**

2.4.1 The Engineer, following the Owner's approval of the Construction Documents and of the latest Statement of Probable Construction Cost, shall, assist in the following tasks to the extent requested by the Owner: obtaining bids or negotiated proposals for the Construction Contract; preparing the necessary bidding information; preparing bid forms; and preparing the General Conditions of the Construction Contract. The Construction Contract between the Owner and the Contractor shall be in the form specified and required by Owner.

2.4.2 On behalf of the Owner and in accordance with the requirements of the Contract, the Engineer will distribute bid sets, schedule pre-bid meetings, respond to requests for clarification to the Contract Documents, and prepare procedural and contractual documents for the inclusion in the Construction Contract specifications.

## **2.5 CONSTRUCTION PHASE -- ADMINISTRATION OF THE CONSTRUCTION CONTRACT**

2.5.1 The Construction Phase will commence with the award of the Construction Contract and, together with the Engineer's obligation to provide Basic Services under this Agreement, will terminate when final payment to the Contractor is due, or in the absence of a final Certificate for Payment or of such due date, will terminate sixty days after the Date of Substantial Completion of the Work, whichever occurs first.

**2.5.2 Unless otherwise provided in this Agreement and incorporated in the Contract Documents, the Engineer shall provide the majority of tasks for the administration of the Construction Contract, with the assistance of the Project Manager, as set forth below and in the Construction Contract. It is understood that the Construction Contract's general conditions will be modified to conform to the provisions of this Agreement and the Construction Contract, which modifications shall be subject to the Engineer's reasonable approval to the extent such modifications affect the Engineer's rights and**



## **responsibilities.**

2.5.3 The Engineer shall be a representative of the Owner during the Construction Phase, and shall advise and consult with the Owner. Instructions to the Contractor shall be forwarded through the Engineer. The Engineer shall have authority to act on behalf of the Owner only to the extent provided in the Contract Documents unless otherwise modified by written instrument in accordance with Subparagraph 2.5.16.

2.5.4 The Engineer shall visit the Project site at intervals appropriate to the stage of construction or as otherwise agreed by the Owner and Engineer in writing to become generally familiar with the progress and quality of the Work and to determine in general if the Work is proceeding in accordance with the Contract Documents and overall design concept. However, the Engineer may be required to make more frequent Project site inspections to check the quality or quantity of the Work. On the basis of such observations, the Engineer shall keep the Owner informed of the progress and quality of the Work, and it shall be the responsibility of the Engineer to alert the Owner against defects and deficiencies in the Work of the Contractor, if known to Engineer based on the limited site visits by Engineer.

2.5.5 The Engineer shall not have control or charge of and shall not be responsible for construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the Work, for the acts or omissions of the Contractor, subcontractors or any other persons performing any of the Work, or for the failure of any of them to carry out the Work in accordance with the Contract Documents.

2.5.6 The Engineer shall at all times have access to the Work wherever it is in preparation or progress.

2.5.7 The Engineer shall determine the amounts owing to the Contractor based on observations at the site and on evaluations of the Contractor's Applications for Payment, and shall issue Certificates for Payment in such amounts, as provided in the Contract Documents which shall be recommendations only, subject to the Owner's approval for payment. However, ultimate responsibility for the accuracy of the Contractor's Applications for Payment shall be Contractor's, not the Project Manager's or the Engineer's.

2.5.8 The issuance of a Certificate for Payment shall constitute a representation by the Engineer to the Owner, based on the Engineer's limited observations at the site as provided in Subparagraph 2.5.4 and on the data comprising the Contractor's Application for Payment, that the Work has progressed to the point indicated; that, to the best of the Engineer's knowledge, information and belief, based on the limited site visits, the quality of the Work is in accordance with the Contract Documents (subject to an evaluation of the Work for conformance with the Contract Documents upon Substantial Completion, to the results of any subsequent tests required by or performed under the Contract Documents, to minor deviations from the Contract Documents correctable prior to completion, and to any specific qualifications stated in the Certificate for Payment); and that the Contractor is entitled to payment in the amount certified subject to the Owner's approval. However, the issuance of a Certificate for Payment shall not be a representation that the Engineer has made any examination to ascertain how and for what purpose the Contractor has used the moneys paid on account of the Contract Sum or the quality of the Work performed or compliance with the Contract Documents by Contractor, all of which remain the Contractor's responsibility and obligation.

2.5.9 The Engineer shall be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder by both the Owner and Contractor. The Engineer shall render interpretations necessary for the proper execution or progress of the Work with reasonable promptness on written request of either the Owner or the Contractor, and shall render written decisions, within a reasonable time, on all claims, disputes and other matters in question between the Owner and the Contractor relating to the execution or progress of the Work or the interpretation of the Contract

## Documents.

2.5.10 Interpretations and decisions of the Engineer shall be consistent with the intent of, and reasonably inferable from, the Contract Documents and shall be in written or graphic form. In the capacity of interpreter and judge, the Engineer shall endeavor to secure faithful performance by both the Owner and the Contractor, shall not show partiality to either, and shall not be liable for the result of any interpretation or decision rendered in good faith in such capacity.

2.5.11 The Engineer's decisions in all matters, including claims, disputes and artistic effect, whether between the Owner and Contractor or between other parties to the Work, shall be made in accordance with the Construction Contract.

2.5.12 The Engineer shall have authority to reject Work which does not conform to the Contract Documents provided, however, if the Contractor disputes the rejection of any work and the correction thereof involves additional cost or time, the Owner has the option to accept such work regardless of its conformance to the Contract Documents. Whenever, in the Engineer's reasonable opinion, it is necessary or advisable for the implementations of the intent of the Contract Documents, the Engineer will have authority to require special inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is at that time fabricated, installed or completed.

2.5.13 The Engineer shall review and approve or take other appropriate action upon the Contractor's submittals such as Shop Drawings, Product Data and Samples, but only for conformance with the design concept of the Work and with the information given in the Contract Documents. Such action shall be taken with reasonable promptness so as to cause no delay. The Engineer's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

2.5.14 The Engineer shall prepare Change Orders for the Owner's approval and execution in accordance with the Contract Documents, and shall have authority to order minor changes in the Work not involving an adjustment in the Contract Sum or an extension of the Contract Time, which are not inconsistent with the intent of the Contract Documents.

2.5.15 The Engineer shall conduct inspections to determine the Dates of Substantial Completion and final completion, shall receive and forward to the Owner for the Owner's review written warranties and related documents required by the Contract Documents and assembled by the Contractor, and shall issue a final Certificate for Payment. The Engineer shall also prepare for the Owner a list of observed items, materials or systems that require replacement or additional work by the Contractor.

2.5.16 The extent of the duties, responsibilities and limitations of authority of the Engineer, as the Owner's representative during construction, shall not be modified or extended without written consent of the Owner, the Contractor and the Engineer; provided, however, the Owner reserves the right to allow the Project Manager to act for the Owner during the construction phase and to supersede the Engineer's construction phase responsibility to the extent set forth in written notice to the Engineer. With respect to such superseded responsibilities, Engineer shall no longer bear responsibility in those areas unless, until, and only to the extent that the Engineer shall be redirected in writing to assume responsibility by the Owner. Except with respect to the authority granted to the Engineer herein, the Engineer shall not exercise any of its prerogatives or duties hereinabove enumerated in such manner as to increase the cost to the Owner of constructing the project without the Owner's prior written approval.

2.5.17 At the conclusion of the Construction Phase and based upon information furnished by the Contractor, prepare and furnish to the Owner a complete record set of Drawings and Specifications in hard copy and an electronic/digital format acceptable to the Owner depicting the Project as modified

during construction.

## **2.6 SUPPLEMENTAL DEFINITION OF BASIC SERVICES**

To the extent required during each Phase of Basic Services, and as a part of Basic Services, the Engineer shall:

2.6.1 Furnish, to the extent necessary in his opinion, the services of soil engineers or other consultants. Such services shall include, as necessary, test borings, test pits, soil bearing values, percolation tests, air and water pollution tests, ground corrosion and resistivity tests, including necessary operations for determining sub-soil, air and water conditions, with reports and appropriate professional recommendations.

2.6.2 Provide services to investigate existing conditions or facilities or to make measured drawings or other information furnished by the Owner as may be required by the Engineer in performing its services hereunder.

2.6.3 Provide, at the Owner's option, documents for alternate bids for the purpose of controlling the Construction Cost.

2.6.4 Prepare Change Orders resulting from deficiencies or conflicts in the Construction Documents.

2.6.5 Prepare additional drawings or modifications to approved Design or Construction Documents to effect cost reductions.

2.6.6 At the conclusion of each Phase of Basic Services, or at such other times as may be requested by Owner, furnish copies of requested Project documents in hard copy and in an electronic/digital format acceptable to the Owner.

2.6.7 As part of Basic Services, to the extent applicable under federal law, Engineer shall design the Project to comply with Title II of the Americans with Disabilities Act, 42 U.S.C. § 12131, *et seq.*, by incorporation into the Project, where appropriate, the 2010 ADA Standards for Accessible Design published by the U.S. Department of Justice, dated September 15, 2010, as may be amended from time to time.

## **2.7 ADDITIONAL SERVICES**

2.7.1 When authorized by the Owner, the Engineer agrees to furnish or obtain from others, additional professional services in connection with the Basic Service due to changes in the Project or its design, subject to mutual agreement as to additional compensation pursuant to Paragraph 12.2.

## **2.8 TIME**

2.8.1 All time limits stated in the Contract Documents and in this Agreement are important. Upon request of the Owner, the Engineer shall submit for the Owner's approval a schedule for the performance of the Engineer's services which shall be adjusted as required as the Project proceeds, and shall include allowances for periods of time required for the Owner's review and approval of submissions and for approvals of authorities having jurisdiction over the Project. This schedule, when approved by the Owner, shall not, except for reasonable cause, be exceeded by the Engineer.

### **ARTICLE 3**

#### **THE OWNER'S RESPONSIBILITIES**

3.1 The Owner shall provide full information regarding requirements for the Project including a program, which shall set forth the Owner's design objectives, constraints and criteria, including space requirements and relationships, flexibility and expandability, special equipment and systems and site requirements.

3.2 If the Owner provides a budget for the Project it shall include contingencies for bidding, changes in the Work during construction, and other costs which are the responsibility of the Owner, including those described in this Article 3. The Owner shall, at the request of the Engineer, provide a statement of funds available for the Project, and their source.

3.3 Owner's Project Manager, as designated in Paragraph 14.2 of this Agreement, shall examine the documents submitted by the Engineer and shall render decisions pertaining thereto promptly, to avoid unreasonable delay in the progress of the Engineer's services.

3.4 The Owner shall furnish structural, mechanical, chemical and other laboratory tests, inspections and reports as required by law or the Contract Documents. However, it shall be the responsibility of the Engineer to determine when, which and the extent to which such tests, inspections and reports are necessary.

3.5 The Owner shall furnish all legal, accounting and insurance counseling services as may be necessary to protect its interests at any time for the Project, including such auditing services as the Owner may require to verify the Contractor's Applications for Payment or to ascertain how or for what purposes the Contractor uses the moneys paid by or on behalf of the Owner.

3.6 The services, information, surveys and reports required by Paragraphs 3.4 and 3.5 shall be furnished at the Owner's expense, and the Engineer shall be entitled to rely upon the accuracy and completeness thereof.

3.7 If the Owner observes or otherwise becomes aware of any fault or defect in the Project or nonconformance with the Contract Documents, prompt written notice thereof shall be given by the Owner to the Engineer.

3.8 The Owner shall furnish required information and services and shall render approvals and decisions as expeditiously as necessary for the orderly progress of the Engineer's services and of the Work. It is the Engineer's responsibility to timely advise the Owner of all time requirements and constraints with respect to such approvals and decisions.

### **ARTICLE 4**

**OMITTED.**

### **ARTICLE 5**

#### **REIMBURSABLE EXPENSES**

5.1 Reimbursable Expenses include actual expenditures made by the Engineer and the Engineer's employees and consultants in the interest of the Project for the expenses listed in the following

Subparagraphs. Engineer shall submit in advance a budget of all anticipated reimbursable expenses which shall be subject to Owner's approval.

5.1.1 Expense of transportation in connection with the Project; living expenses in connection with out-of-town travel; long distance communications; and fees paid for securing approval of authorities having jurisdiction over the Project.

5.1.2 Expense of reproductions, postage and handling of Drawings, Specifications and other documents, excluding reproductions for the office use of the Engineer and the Engineer's consultants.

5.1.3 Expense of data processing and photographic production techniques.

5.1.4 Expense of renderings, models and mock-ups requested by the Owner.

## **ARTICLE 6**

### **PAYMENTS TO THE ENGINEER**

#### **6.1 PAYMENTS ON ACCOUNT OF BASIC SERVICES**

6.1.1 Payments for Basic Services shall be made monthly and shall be in proportion to services performed on the basis set forth in Article 12.

6.1.2 If and to the extent that the Contract Time initially established in the Construction Contract is exceeded or extended by more than sixty (60) days through no fault of the Engineer, compensation for any Basic Services required for such extended period beyond said sixty (60) day period shall be computed as set forth in Paragraph 12.2.

#### **6.2 PAYMENTS WITHHELD**

6.2.1 No deductions shall be made from the Engineer's compensation on account of penalty, liquidated damages or other sums withheld from payments to Contractor or subcontractors, or on account of the cost of changes in the Work other than those for which the Engineer is held legally liable.

#### **6.3 PROJECT SUSPENSION OR TERMINATION**

6.3.1 If the Project is suspended or abandoned in whole or in part for more than three months, the Engineer shall be compensated for all services performed prior to receipt of written notice from the Owner of such suspension or abandonment. If the Project is resumed after being suspended for more than three months, the Engineer's compensation shall be equitably adjusted.

## **ARTICLE 7**

### **ENGINEER'S ACCOUNTING RECORDS**

7.1 Records of services that Engineer provides pursuant to this Agreement shall be kept in accordance with generally accepted accounting principles, and shall be available to the Owner or the Owner's authorized representative at mutually convenient times for not less than three (3) years following completion of the Work.

## **ARTICLE 8**

### **OWNERSHIP AND USE OF DOCUMENTS**

8.1 All drawings and specifications prepared during the design, development and construction phases, but which are not included in the Contract Documents incorporated into the Construction Contract between the Owner and the Contractor (drawings and specifications prepared by Engineer, but excluded from the project prior to the establishment of the contract price) shall remain the property of the Engineer.

8.2 All other drawings and specifications prepared pursuant to this Agreement (drawings and specifications which become a part of the Contract Documents incorporated into the Construction Contract between the Owner and Contractor) shall be the joint property of the Owner and Engineer, provided, however, the rights of ownership shall be limited as follows:

8.2.1 The Owner may utilize the drawings and specifications with respect to construction, maintenance, repair and modification of the Project.

8.2.2 Owner may utilize the drawings and specifications with respect to another project if (a) the Owner engages the Engineer to perform engineering/architectural services with respect thereto at a reduced fee to be negotiated, or (b) the Owner engages another licensed engineer with respect to said project and agrees to hold the Engineer harmless and indemnify the Engineer from any claims arising out of Owner's subsequent use of said drawings and specifications.

8.2.3 Engineer may utilize any of the constituent parts of the drawings and specifications on any other project, except for any unique or distinctive engineering/architectural components or effects which taken independently or in combination would produce a project with substantially similar and distinctive features.

8.3 Engineer shall provide the Owner with a complete set of drawings and specifications in hard copy **and** in a electronic/digital format acceptable to Owner as required by paragraph 2.6.5.

8.4 Submission or distribution to meet official regulatory requirements or for other purposes in connection with the Project is not to be construed as publication in derogation of the Engineer's rights.

## **ARTICLE 9**

### **TERMINATION OF AGREEMENT**

9.1 This Agreement shall terminate at such time as the work in Article 2 is completed and the requirements of this Agreement are satisfied, or upon the Owner's providing Engineer with seven (7) days advance written notice, whichever occurs first. In the event of termination not the fault of the Engineer, the Owner shall pay Engineer for all work completed to the date of termination.

9.2 If the Engineer materially defaults, the Owner, after seven (7) days written notice to the Engineer and without prejudice to any other remedy he may have, may make good such deficiencies and may deduct the cost thereof, including compensation for any additional services made necessary thereby, from the payment then or thereafter due the Engineer. Or, at the Owner's option after said notice, Owner may terminate this Agreement and may finish the services of Engineer by reasonably economical method.

## **ARTICLE 10**



## **GOVERNING LAW AND VENUE**

10.1 This Agreement shall be governed by the law of the State of Colorado and the Charter of the City of Westminster. This Agreement shall be deemed entered into in both Adams County and Jefferson County, State of Colorado, as the Owner is located in both counties. At the Owner's option, the location for settlement of any and all claims, controversies and disputes arising out of or related to this Agreement or any breach thereof, whether by alternative dispute resolution or litigation, shall be proper only in either county.

## **ARTICLE 11**

### **SUCCESSORS AND ASSIGNS**

11.1 The Owner and the Engineer, respectively, bind themselves, their partners, successors, assigns and legal representatives to the other party to this Agreement and to the partners, successors, assigns and legal representatives of such other party with respect to all covenants of this Agreement. Neither the Owner nor the Engineer shall assign, sublet or transfer any interest in this Agreement without the written consent of the other, except that the Owner may assign this Agreement to any affiliated party provided that the Owner shall nevertheless continue to be responsible for payment for all Basic Services and Additional Services incurred through the date of such assignment and Basic Services incurred thereafter. This restriction on assignment includes, without limitation, assignment of the Engineer's right to payment to its surety or lender.

## **ARTICLE 12**

### **BASIS OF COMPENSATION**

The Owner shall compensate the Engineer for the Scope of Services provided, in accordance with Article 6, Payments to the Engineer, and the other Terms and Conditions of this Agreement, as follows:

#### **12.1 BASIC COMPENSATION**

12.1.1 For Basic Services, as defined in paragraph 1.2 and paragraph 2.6 herein, and any other services included in Article 14 as part of Basic Services, Basic Compensation shall be according to the Engineer's fee schedule, as set forth in Attachment 2, attached hereto and incorporated herein by this reference, including Reimbursable Expenses as described therein. The maximum amount billable under this Agreement shall not exceed one million two hundred sixty-six thousand six hundred forty-five dollars (\$1,266,645.00). The Engineer shall submit invoices to the Owner for services rendered during the preceding month, such invoices to be in such form and detail as shall reasonably be required by the Owner. Reimbursable Expenses shall be itemized. The Owner agrees to pay the Engineer within thirty (30) days of receipt of properly documented invoices.

#### **12.2 COMPENSATION FOR ADDITIONAL SERVICES**

12.2.1 For additional services of the Engineer, as described in Paragraph 1.2, and any other services included in Article 14 as part of Additional Services, but excluding Additional Services of consultants, compensation shall be estimated by the Engineer in the form of personnel time, subconsultant costs and direct expenses, and shall be proposed in writing to the Owner. Requests for approval of Additional Services shall be made to the Owner within sixty (60) days of the date the Work constituting the

Additional Services was initiated. The scope, nature and compensation for such Additional Services shall be agreed to and memorialized by the Parties through an addendum to this Agreement.

### 12.3 OTHER COMPENSATION PROVISIONS

The Owner and the Engineer agree in accordance with the Terms and Conditions of this Agreement that:

12.3.1 If the scope of the Project or of the Engineer's Services is changed, the amounts of compensation shall be equitably adjusted.

12.3.2 If the services covered by this Agreement have not been completed within eighteen (18) months of the date hereof, through no fault of the Engineer, the amounts of compensation, rates and multiples set forth herein shall be equitably adjusted.

## **ARTICLE 13**

### **INSURANCE, RISK CONTROL AND INDEMNIFICATION**

The Engineer shall, during the term of this Agreement and until completion thereof, provide and maintain the following insurance coverages:

13.1 The Engineer shall file with the Owner a Certificate of Professional Errors and Omissions Insurance having limits of one million dollars (\$1,000,000) for each claim and two million dollars (\$2,000,000) annual aggregate. The Engineer shall be required to maintain and keep in effect said professional errors and omissions insurance coverage for the period of two years after completion of Engineer's Services.

13.2

#### Type of Insurance

#### Limits of Liability

Standard Workers' Compensation  
and Employer's Liability including  
Occupational Disease Coverage

Statutory in conformance with  
the compensation laws of the  
State of Colorado

Commercial General Liability  
Insurance

\$500,000 each person;  
\$1,000,000 each occurrence  
-or-  
\$1,000,000 per occurrence  
combined single limit and  
\$2,000,000 aggregate

Business Automobile Liability  
Insurance

\$500,000 each person;  
\$1,000,000 each occurrence  
-or-  
\$1,000,000 per accident  
combined single limit

The Engineer shall provide a Certificate of Insurance listing the Owner as an additional insured under the Engineer's Automobile, Commercial General and Comprehensive Automobile Liability policies. Additional insured coverages shall include products and completed operations coverage. The

Engineer shall provide a certificate of insurance in a form reasonably satisfactory to the Owner. Before commencing any performance under this Agreement, Engineer shall deliver to the Owner Certificates of Insurance issued by the insurance company, and/or its duly authorized agents pertaining to the aforementioned insurance, and evidencing that the policies stipulated above are in full force and effect and will not be cancelled without the prior written notice to the Owner.

All liability insurance shall be broad form, shall include coverage for contractual liability, shall be occurrence-based, and shall specifically provide that all coverage limits shall be exclusive of costs of defense, including attorney fees. **It shall be an affirmative obligation of the Engineer to provide written notice to Owner within ten days of the cancellation of or substantive change to any of the policies required in this Article 13, and failure to do so shall constitute a breach of this Agreement.** Nothing herein shall prevent Owner from requiring further and/or additional insurance to be provided by Engineer as the Owner may deem necessary.

13.3 To the fullest extent permitted by law and except for professional liability claims, which are addressed in the paragraph below, the Engineer agrees to indemnify, defend, and hold harmless the Owner, its officers, and employees from and against all liability, claims, and demands, including but not limited to attorneys' fees, on account of any injury, loss, or damage arising out of, connected to, or resulting from the Project, if such injury, loss, or damage, or a portion thereof, is caused by the act, omission, or fault of the Engineer, any subcontractor of the Engineer, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excluding any portion directly attributable to the Owner's own negligence, and only to the degree or percentage of negligence or fault agreed to be or adjudicated to be attributable to the Engineer, any subcontractor of the Engineer, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

For professional liability claims, to the fullest extent permitted by law, the Engineer agrees to indemnify and hold harmless the Owner, its officers, and employees from and against all professional liability claims and demands, including but not limited to attorneys' fees, on account of any injury, loss, or damage arising out of, connected to, or resulting from the Project, but only to the extent such injury, loss, or damage, or a portion thereof, is caused by the negligent act, omission, or fault of the Engineer, any subcontractor of the Engineer, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, excluding any portion attributable to the Owner's negligence, its officer, its employees, and its separate contractors, and only to the degree or percentage of negligence or fault agreed to be or adjudicated to be attributable to the Engineer, any subcontractor of the Engineer, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable.

13.4 In any and all claims against the Owner, its officers, or employees by any employee of the Engineer, any subcontractor of the Engineer, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligations under this Article 13 shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the Engineer or any subcontractor under the workers' compensation acts, disability benefit, acts or other employee benefit acts.

13.5 The Parties agree that any time the Engineer prepares any document for "the approval of the Owner," such approval does not mean that Owner is responsible for the accuracy, thoroughness, or judgment contained in the document. Owner does not waive the right to hold the Engineer responsible for the accuracy, thoroughness, or judgment expressed in the document, as it is expressly agreed by the Parties that the Owner is relying on the Engineer to perform in a manner consistent with the standard of

care.

13.6 The Owner and Engineer release each other and waive damages, costs, expenses, and all rights of subrogation against each other and their officers, directors, agents, or employees for damage covered by property insurance or that could be covered by property insurance during and after the completion of Engineer's services. A provision similar to this shall be incorporated into all construction contracts entered into by Owner, and all construction contractors shall be required to provide waivers of subrogation in favor of Owner and Engineer for damage covered by any construction contractor's property insurance.

## **ARTICLE 14**

### **OTHER CONDITIONS OR SERVICES**

14.1 All communications in writing required or permitted hereunder shall be delivered personally to the respective representatives of the Owner and Engineer set forth below or shall be mailed by registered mail, postage prepaid, return receipt requested (or airmail, if addressed to an address outside the city of dispatch). Notices hereunder shall be effective: if delivered personally, on delivery; if mailed to an address in the city of dispatch, on the second day following the date mailed; and if mailed to an address outside the city of dispatch, when received, or on the seventh day following the date mailed, whichever is sooner. Until changed by written notice, all such notices and communications shall be addressed as follows:

Engineer  
Kyle LeBrasse  
9191 S. Jamaica Street  
Englewood, CO 80112  
720-592-3417  
kglebrasse@burnsmcd.com

Owner  
AndyWalsh  
6575 W. 88<sup>th</sup> Avenue  
Westminster, CO 80031  
303-658-2563  
awalsh@westminsterco.gov

14.2 Unless notification is otherwise given in writing, the Project Manager shall be AndyWalsh, and the Engineer shall be represented by Kyle LeBrasse. The Engineer's representative is the party empowered by the Engineer to receive all notices and communications and to act in all respects for the Engineer to the extent of the Engineer's responsibilities herein.

14.3 This Agreement represents the entire and integrated agreement between the Owner and the Engineer and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Owner and Engineer.

14.4 Engineer will take affirmative action to not unlawfully discriminate against any subcontractor, employee or applicant for employment because of race, color, immigration status, gender identity or expression, sexual orientation, national origin, sex or disability, if otherwise qualified. Such actions shall include, but not be limited to, the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation; and selection for training including apprenticeship. Engineer represents that it will require a similar affirmation of nondiscrimination in any contract it enters into with a subcontractor as part of the execution of this Agreement.

14.5 The Engineer hereby agrees to be joined in any arbitration or litigation between the Owner and the Contractor wherein the Engineer's responsibilities are at issue. The Engineer further agrees to indemnify

and hold harmless the Owner and Owner's agents and employees against all claims, damages, losses and expenses consistent with its duties under section 13.3 of this Agreement.

14.6 The Engineer will not subcontract any of the work to be performed under this Agreement without prior approval from the Owner. If the Engineer obtains such approval to subcontract work, the Engineer shall remain fully responsible for all work performed hereunder.

14.7 In the performance of the Services, the Engineer shall act as an independent contractor and not as agent of the Owner except to the extent the Engineer is specifically authorized to act as agent of the Owner.

14.8 The Engineer agrees that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. The Engineer further agrees that in the performance of the Agreement, no person having any such interest shall be employed.

14.9 No official or employee of the Owner shall have any interest, direct or indirect, in this Agreement or the proceeds thereof.

14.10 Neither party shall hold the other responsible for damages or delay in performance caused by acts of God, strikes, lockouts, accidents or other events beyond the reasonable control of the other or the other's employees and agents.

14.11 The Engineer will exercise in its performance of the Services the standard of care normally exercised by reputable professional in good standing in Colorado would use in similar circumstances.

14.12 Re-performance of services that fail to meet the standard of care shall be Engineer's sole obligation and the Owner's sole remedy. Nothing in this subsection shall be construed as a limitation on Engineer's obligation, as established in this Agreement, to defend, indemnify, or hold harmless the City for personal injury and third-party property damages to the extent caused by Engineer's negligence.

14.13 In the event any provisions of this Agreement shall be held to be invalid and unenforceable, the remaining provisions shall be valid and binding upon the Parties. One or more waivers by either party of any provision, term, condition or covenant shall not be construed by the other party as a waiver of a subsequent breach of the same by the other party.

14.14 The Engineer shall report to the Owner's representative promptly and in reasonable detail, each notice or claim of copyright, trade secret or patent infringement based on the performance of this Agreement of which the Engineer has knowledge. In the event of any claim or suit against the Owner on account of any such alleged infringement arising out of the performance of this Agreement or out of the use of any supplies furnished or work or services performed hereunder, the Engineer shall furnish to the Owner, when requested by the Owner's representative, all evidence and information in possession of the Engineer pertaining to such suit or claim. The Engineer shall defend and indemnify the Owner against such claim or suit if the Engineer committed or caused such infringement.

14.15 The Services shall be completed as soon as good practice and due diligence will permit, unless a specific deadline is set forth in the Notice to Proceed received by the Engineer, in which case that deadline shall apply.

14.16 In the event it becomes necessary for either party to bring an action against the other to enforce any provision of this Agreement, in addition to any other relief that may be granted, the prevailing party in

such action shall be entitled to an award of its reasonable attorney fees as determined by the Court.

14.17 In the event of an inconsistency between any provisions of the Contract Documents, the more specific provisions shall govern the less specific provisions and written addenda, Change Orders or other modifications approved in writing by both Parties shall govern the original documents.

14.18 The person or persons signing and executing this Agreement on behalf of each Party, do hereby represent that he/she or they have been fully authorized to execute this Agreement and to validly and legally bind such Party to all the terms, performances and provisions herein set forth.

14.19 The Parties hereby acknowledge that this Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The Parties agree that signature pages may be executed via ink signature or electronic mark and the executed signature pages may be delivered using pdf or similar file type transmitted via electronic mail, cloud based server, e-signature technology or other similar electronic means. Further, the Parties acknowledge and agree that the original of this Agreement, including the signature page, may be scanned and stored in a computer database or similar device, and that any printout or other output readable by sight, the reproduction of which is shown to accurately reproduce the original of this Agreement, may be used for any purpose as if it were the original, including proof of the content of the original writing.

14.20 Engineer may engage or obtain assistance from its affiliates and subsidiaries including, without limitation, Burns & McDonnell Canada Ltd., Burns & McDonnell Global, Inc. and Burns & McDonnell Engineering India Pvt. Ltd. ("Affiliates") to fulfill Engineer's performance obligations under this Agreement. The Parties agree that contracts, purchase orders or similar agreements between Engineer and any Affiliates are not subcontracts and persons from such Affiliates shall be billed to Owner according to the rate sheet/billing rate defined for the applicable Purchase Order.

**14.21 This Agreement is expressly contingent upon the appropriation of funds by the City of Westminster's City Council for each fiscal year of the Agreement. In the event the Westminster City Council does not appropriate the funds for any fiscal year the Agreement is active, it will be treated as if the City had given its notice to terminate the Agreement in compliance with Article VI. As a result, nothing in this Agreement shall be deemed or construed as a multiple year fiscal obligation under the meaning of Colorado Constitution Article X, Section 20, also known as the TABOR Amendment. This Agreement is expressly contingent upon the approval of the City of Westminster's City Council of all of the terms set forth herein. In the event this Agreement is not approved in its entirety by City Council, neither Party shall be bound to the terms of this Agreement.**

INSURANCE CERTIFICATES REQUIRED BY THIS AGREEMENT SHALL BE SENT TO THE Public Works and Utilities Department, ATTENTION: Andy Walsh.

REMAINDER OF PAGE INTENTIONALLY BLANK. SIGNATURE PAGE FOLLOWS.



This Agreement entered into as of the day and year first written above.

Burns & McDonnell Engineering Company, Inc.	CITY OF WESTMINSTER
By: _____	By: _____
Printed Name: _____	Printed Name: _____
Title: _____	Title: _____
ATTEST:	ATTEST:
_____	_____
Printed Name: _____	City Clerk
Title: Corporate Secretary	(Seal)
(Corporate Seal)	
	APPROVED AS TO LEGAL FORM
	By: _____
	City Attorney
I certify that either an appropriation has been made by the City Council or that sufficient funds have otherwise been made available for the payment of this Agreement.	
	_____ City Manager
	Account No. _____