

**CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT
CENTRAL PLATTE VALLEY COORDINATION METROPOLITAN DISTRICT
INTERGOVERNMENTAL FUNDING AND COOPERATION AGREEMENT**

THIS INTERGOVERNMENTAL FUNDING AND COOPERATION AGREEMENT (“Agreement”) is made and entered into effective as of October 8, 2013, by and between Central Platte Valley Metropolitan District (“CPVMD”), and Central Platte Valley Coordination Metropolitan District (“Coordination District”), both quasi-municipal corporations and political subdivisions of the State of Colorado, each a “District” or “Party” and collectively the “Districts” or “Parties.”

RECITALS

A. CPVMD was established to provide for the design, construction, installation, financing, operation and maintenance of certain street, safety protection, water, sanitation and park and recreation improvements (the “Improvements”) in compliance with its service plan, which was approved by the City Council in and for the City and County of Denver, Colorado (the “City”) on January 30, 1998, revised on March 9, 1998 and further amended on September 28, 2000 (as amended, the “CPVMD Service Plan”).

B. Although some Improvements have been dedicated to the City and other third-party governmental and non-governmental entities for ownership, operation and maintenance purposes, CPVMD continues to operate and maintain significant public infrastructure, including back-of-curb improvements, the Millennium Bridge, the Union Gateway Bridge and the 16th Street plaza and fountain. CPVMD will also operate and maintain additional Improvements as development of the property west of the CML continues. CPVMD remains critically important to the continued success of the Central Platte Valley and the integration with Denver Union Station project.

C. There has been a significant monetary investment by CPVMD and the other neighboring governmental entities, including, specifically, the Regional Transportation District, Downtown Union Station Project Authority, Downtown Denver Partnership Business Improvement District and the DUS Metropolitan District Nos. 1-5, to ensure that the public facilities and services needed for both the Central Platte Valley and the Denver Union Station neighborhoods continue to be consistently provided.

D. The Coordination District was established by CPVMD to help provide for consistent and uniform care of the public infrastructure needed to serve the entire Central Platte Valley, which consists of both residential and commercial properties.

F. Pursuant to its service plan, as approved by the City Council on November 26, 2012, the Coordination District will be the entity responsible for coordinating the operation and maintenance of all public services and Improvements throughout the Central Platte Valley. The Improvements will be for the use and benefit of the owners, taxpayers and residents of CPVMD, as well as for all citizens in the metropolitan Denver area and the State of Colorado. Upon their

completion, it is anticipated that the Coordination District will not own any Improvements, but will rather dedicate all Improvements to CPVMD, the City or to such other governmental entity as appropriate.

G. CPVMD has issued general obligation bonds in the approximate aggregate principal amount of \$58,835,000, and has the authorization to issue additional general obligation bonds to finance the construction, installation and maintenance of the Improvements. Furthermore, CPVMD currently imposes a mill levy upon all property located within its boundaries for debt service and operations purposes. CPVMD also currently imposes a debt service mill levy upon certain residential property located to the west of the Consolidated Main Line (the "CML") that has since been excluded from its boundaries.

H. CPVMD and the Coordination District have determined it is in the best interests of their respective taxpayers and service users to establish this Agreement in furtherance of their intent to cooperate to effect the continued development of the Central Platte Valley neighborhood and to promote both the interests of the present and future residents, property owners and taxpayers within and without the Central Platte Valley, as well as the general interests of the City.

COVENANTS AND AGREEMENTS

In consideration of the foregoing Recitals, which are incorporated by reference into this Agreement, and in consideration of the mutual promises and undertakings herein set forth, the Parties agree as follows:

ARTICLE 1. PURPOSE AND TERM

1.1 General Purpose. This Agreement is intended to establish the process for CPVMD and the Coordination District to formulate and approve an annual operations and maintenance budget for areas serviced by the Districts, manage and operate the public infrastructure for which the Districts are responsible, issue debt and resolve disputes.

1.2 Intent of the Parties. It is the intent of the Coordination District and of CPVMD that the Coordination District shall manage, administer and supervise the operational aspects of the Districts' responsibilities for landscaping, infrastructure replacement, maintenance and repair, and coordination with other private and governmental entities including for the negotiation of easements, licenses, and contracts. Such operations and maintenance contracts currently with CPVMD shall be assigned to, or executed by, the Coordination District in calendar year 2014 and thereafter. It is the further intent of the Parties that the Coordination District shall participate in the determinations for any new or refunding debt issuances by CPVMD occurring after the effective date herein. The Parties shall work diligently to manage the operational costs of both Districts through a coordinated budget process and to limit any new debt to amounts that do not unduly burden the private or public property within the Districts.

1.3 **Term.** This Agreement shall continue for a period of forty (40) years unless earlier terminated by a joint resolution of both Parties.

ARTICLE 2. DEFINITIONS

2.1 **Debt.** Obligations of CPVMD issued in any form approved by CPVMD and incurred for the purpose of paying, reimbursing, financing or refinancing the costs of capital improvements and costs of issuance and for which CPVMD irrevocably pledges taxes or fees in accordance with its authorized electoral and Service Plan authorization.

2.2 **Debt Revenues.** Debt revenues are the revenues of CPVMD collected from *ad valorem* property taxes imposed for Debt service purposes.

2.3 **Debt Obligations.** For purposes of this Agreement, Debt Obligations means the following obligations of CPVMD existing and outstanding as of September 1, 2013, including any refunding or refinancing thereof, but excluding any new money issued as part of any refunding or refinancing:

- Series 2009 A1 Tax Free Loan
- Series 2009 A2 Tax Free Loan
- Series 2009 B Loan
- Central Platte Valley Management, LLC Reimbursement Obligation
- Trillium Corporation Reimbursement Obligation

All as more particularly described in the CPVMD Financial Statements, Note 5 – Long Term Obligations, dated December 31, 2012.

2.4 **O&M Revenues.** O&M Revenues are the revenues of CPVMD from *ad valorem* property taxes imposed for non-debt purposes, maintenance fees, and all specific ownership taxes, after deducting amounts approved by the budget for the administrative expenses of CPVMD.

2.5 **TABOR.** Article X, § 20 of the Colorado Constitution.

ARTICLE 3. BUDGET PROCESS AND FUNDING

3.1 Coordination District and CPVMD Consultants to Prepare Draft Budget. The accountant, manager, and such other consultants of the Coordination District, as the Coordination District manager deems appropriate, shall meet with the accountant, manager, and such other consultants of CPVMD, as the CPVMD manager deems appropriate, and shall cooperatively prepare a draft budget for each subsequent calendar year. The draft budget shall be available to the Boards of Directors of each of the respective Districts no later than October 15 of the year preceding the calendar year for which such budget is proposed.

3.2 Reserves and Contingencies. In addition to ongoing maintenance items, the Districts shall include in the annual budget sufficient amounts for infrastructure needing maintenance, repair and/or replacement during the immediately subsequent calendar year. All amounts budgeted for operations and maintenance purposes shall include a ten percent (10%) contingency amount and a reserve shall also be funded in the amount of five percent (5%) of the operations budget.

3.3 Administrative Expenses. Each of the Districts shall require funding for management, accounting, audit, legal and engineering expenses. The Coordination District shall not separately charge CPVMD any additional or extraordinary amounts for compliance with the obligations it has undertaken pursuant to this Agreement, such obligations being included within the administrative expenses of the Coordination District.

3.5 Mill Levy Cap for Operations and Maintenance. The Districts shall not exceed a mill levy of twenty (20.000) mills for operations and maintenance items, except pursuant to a joint resolution of the Districts specifying the reasons why the mill levy will exceed twenty (20.000) mills for the specified calendar year budget. In the event that twenty (20.000) mills are insufficient to meet the costs of all items to be funded as provided for herein, the priority of funding shall be:

- FIRST: Critical repair or replacement of infrastructure for which funding from contingencies or reserves is unavailable or unappropriated. "Critical" means that the condition of the infrastructure poses an immediate risk to health, life, property, or environment and requires urgent intervention to prevent a worsening of the situation.
- SECOND: Administrative expenses.
- THIRD: Ongoing maintenance, including landscaping and upkeep of the elevators, bridges, back of curb improvements, 16th Street Plaza and appurtenant facilities, and security.
- FOURTH: Non-critical repairs and replacement of infrastructure.
- FIFTH: Contingencies.
- SIXTH: Reserve.

3.2 Budget Meetings. For so long as at least a majority of the Board members for each of the respective District's Board of Directors are the same individuals, the Coordination District

and CPVMD shall conduct any meetings to discuss or adopt each respective District's annual budget concurrently. At such time as at least a majority of the Board members for each of the respective District's Board of Directors are different individuals, the Coordination District and CPVMD shall conduct any meetings to discuss or adopt each respective District's annual budget on the same day and at the same location, one meeting to follow the other.

3.3 O&M Revenues. All O&M Revenues received by CPVMD shall be remitted no later than five (5) days after receipt to the Coordination District.

ARTICLE 4. OPERATIONS AND MAINTENANCE

4.1 Maintenance Area. The general area to be maintained by the Districts includes the property within the existing boundaries of CPVMD and the Coordination District on the east side of the CML to Wewatta Street between 15th Street and 20th Street and the property west of the CML to Little Raven Street from 15th Street to 20th Street, all subject to separate intergovernmental or other third-party agreements and as generally depicted in the map attached hereto and incorporated herein as **Exhibit A**. Neither District shall obligate itself to maintain any additional areas except pursuant to a joint resolution of the Districts. Additionally, neither District shall include any new property into its boundaries except with the consent of the other District, which consent shall be express, written and provided prior to the inclusion hearing for the subject property so included. Notwithstanding the foregoing, the boundaries of the Coordination District may be moved without the consent of CPVMD so long as the new boundaries overlap the then-current boundaries of CPVMD.

4.2 Standards of Maintenance. By virtue of that Infrastructure/Open Space Agreement between CPVMD and the City dated September 22, 1998 and amended on September 11, 2001 and April 14, 2010 (as may be further amended, the "IOS Agreement"), CPVMD is obligated to maintain certain public improvements located on property CPVMD has previously excluded from its boundaries, which property is no longer subject to CPVMD's operation and maintenance mill levy. The standard of maintenance for infrastructure in the service areas of the District shall be at the standard established during calendar year 2013 as evidenced by: a) the scope of work approved by CPVMD through its annual maintenance contracts with the Downtown Denver Business Improvement District, Western Proscapes, Inc., KOMAC, LLC, Swingle Tree Co., ThyssenKrupp Elevator Corporation, Frontier Mechanical, Inc., and East West Urban Management, LLC, as may be amended, substituted or supplemented from time to time; b) any maintenance schedule established for both the Millennium Bridge and the Union-Gateway Bridge; c) the IOS Agreement; d) the annual cost-sharing agreement between CPVMD and the Riverfront Park Associations, as may be amended, substituted or supplemented from time to time; e) that Intergovernmental Agreement between CPVMD and the Regional Transportation District Regarding 17th Street Public Improvements, dated May 28, 2013, as may be amended; and f) that memorandum of understanding between CPVMD and DaVita Healthcare Partners, Inc., dated March 5, 2013, as well as any other future agreements, amendments or supplements between CPVMD and any other third-party developers within or without CPVMD's boundaries concerning the allocation of any public infrastructure maintenance, repair or replacement obligations from CPVMD to such third-party developer.

Any increase or decrease to the standard of maintenance established by the documents described above shall require a joint resolution of the Districts, if temporary, or an amendment to this Agreement, if permanent.

4.3 Coordination District to Administer Operations and Maintenance Contracts.

The Coordination District shall be responsible for the negotiation, administration, management and oversight of operations and maintenance contracts and activities for the Districts. Additionally, subject to funding provided by CPVMD, the Coordination District shall also be responsible for the negotiation, administration, management and oversight of construction and construction administration contracts for the Districts. The Coordination District shall seek the advice of CPVMD with regard to operations and maintenance contracts and activities during the budget process, during contract negotiations, and at such times as are necessary or convenient to coordinate the activities of the Districts. Notwithstanding the foregoing, unless otherwise approved by CPVMD, CPVMD shall negotiate and enter into any contracts concerning the licensing or usage of any portion of property subject to its adopted Special Events Policy, as may be amended from time to time, or its adopted Restoration Fee Resolution, as may be amended from time to time.

ARTICLE 5. DEBT ISSUANCE

5.1. Debt Issued by CPVMD. In the event that any new Debt is issued by CPVMD, CPVMD shall seek the advice of the Coordination District and shall include the Coordination District in any meetings with the City and/or underwriters for the new Debt transaction. It is the intent of the Districts that no new Debt shall impair the ability of the Districts to maintain, repair and replace existing public infrastructure to the standards established herein or to unduly burden the taxpaying property owners and residents of each of the Districts. Once the existing Debt Obligations of CPVMD are paid, the Districts agree that any future Debt issued by CPVMD in excess of twenty million dollars (\$20,000,000) ("Maximum Debt"), as such Maximum Debt may be annually increased by the Hensel Phelps construction cost index, or such other comparable construction cost index that the Districts may agree upon, is presumptively a burden to taxpayers in the Districts and CPVMD shall act in good faith not to exceed such Maximum Debt except to meet the obligations of the Districts or where the needs of the District are critical or so otherwise demand.

ARTICLE 6. DISPUTE RESOLUTION

6.1 Non-Termination. The Districts agree that no breach of this Agreement shall justify or permit termination of the continuing obligations of this Agreement.

6.2 Breach, Remedies. In the event of breach of any provision of this Agreement, in addition to contractual remedies provided herein and to the dispute resolution process described in Section 6.3, *infra*, either District may ask a court of competent jurisdiction to enter a *writ of mandamus* to compel the Board of Directors of the defaulting District to perform its duties under this Agreement, and either District may seek from a court of competent jurisdiction temporary

and/or permanent restraining orders, or orders of specific performance, to compel the other Party to perform in accordance with the obligations set forth under this Agreement.

6.3 Dispute Resolution. If a dispute arises under this Agreement:

6.3.1. the complaining District shall promptly provide a written "Notice of the Disagreement" to the other District explaining the dispute at issue and at least one (1) reasonable alternative for a solution;

6.3.2. if direct negotiation between the Districts fails to resolve the dispute within thirty (30) days of receipt of the "Notice of Disagreement," and if the Districts agree not to pursue other remedies until the Resolution Committee (as defined below) has issued its findings, then the Districts shall create a "Resolution Committee" to resolve the dispute, as further described in this Section 6.3;

6.3.3. the President of the Board of each District, or a designee thereof, shall appoint an advisor with knowledge of the subject matter of the dispute (by way of example, without limitation, if a storm drainage facility is the subject of the dispute, the President of each respective District Board shall each appoint an engineer with knowledge of storm drainage facilities and engineering), and the advisors shall mutually agree on a third advisor with knowledge of the subject matter of the dispute, thereby forming the "Resolution Committee" consisting of such Presidents, or designees, and such advisors, for a total number of five (5) members;

6.3.4. forthwith, the Resolution Committee shall meet at an open meeting, which shall be noticed in the same manner as any other regular or special meeting of the Districts pursuant to C.R.S. §§ 32-1-201, *et seq.*, to review such information as may be presented to the Resolution Committee, make such independent investigations as reasonably determined to be necessary, and decide the dispute by majority vote of the Resolution Committee at a meeting following reasonable notice at which all are present;

6.3.5. in its review of the dispute, the Resolution Committee shall review the facts, the technical materials, if any, and any other materials deemed appropriate by the Resolution Committee, and shall make a determination that shall resolve all of the issues concerning the dispute presented to it. The standards that the Resolution Committee shall use in the determination of any dispute shall include: (1) whether the resolution conforms to this Agreement, (2) whether the resolution is likely to result in a violation of any permit, regulation, or law, (3) the reasonableness of each District's position, and (4) the language of the Agreement and goals that the Districts sought to achieve pursuant to this Agreement;

6.3.6. the Resolution Committee shall, promptly upon making its decision, inform the Boards of Directors of the Districts in writing of such decision. If the Board of each District does not adopt the decision of the Resolution Committee by written resolution within thirty (30) days' notice of the decision, the other remedies available to the Districts delineated herein may be pursued by either District.

6.3.7. The Resolution Committee's decision is not to be deemed as a "final decision" by arbitration or otherwise.

ARTICLE 7. GENERAL PROVISIONS

7.1 **Choice Of Law And Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado and applicable federal law. Venue for any claims made pursuant to this Agreement shall be in the District Court in and for the City and County of Denver, Colorado.

7.2 **Authority.** Each Party hereto represents and warrants that it has all requisite power, corporate and otherwise, to execute, deliver and perform their respective obligations pursuant to this Agreement. Each Party hereto represents and warrants to the other that the execution, delivery and performance of this Agreement has been duly authorized by it, and that upon execution and delivery, this Agreement will constitute a legal, valid and binding obligation, enforceable against it in accordance with their terms.

7.3 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which together shall constitute one and the same instrument.

7.4 **Further Assurances.** Each of the Parties hereto, at any time and from time to time, will execute and deliver such further instruments and take such further action as may reasonably be requested by the other Party hereto, in order to cure any defects in the execution and delivery of, or to comply with or accomplish the covenants and agreements contained in this Agreement and/or any other agreements or documents related thereto.

7.5 **Severability.** In the event 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, the intent being that such remaining provisions shall remain in full force and effect. Further, the Districts agree to amend this Agreement the extent allowed by law and in such a manner as to give full effect the intent of the Districts herein.

7.6 **Notices.** If under the terms of this Agreement, notice is to be provided to any party, said notice shall be deemed provided upon personal delivery, overnight delivery by a nationally-recognized overnight delivery service, or three (3) business days after the mailing of the same by registered or certified mail, return receipt requested. The names of any person to whom notice is to be sent may be modified by the affected Party by a written notice in writing to the other Party. Until so modified, the persons to receive notice are as follows:

Central Platte Valley Metropolitan District

c/o CliftonLarsonAllen, LLP
8390 East Crescent Parkway, Suite 500

Greenwood Village, CO 80111
Attn: Bob Blodgett

With a copy to:

Miller & Associates Law Offices, LLC
700 17th Street Suite 2200
Denver CO 80202

Central Platte Valley Coordination Metropolitan District

c/o CliftonLarsonAllen, LLP
8390 East Crescent Parkway, Suite 500
Greenwood Village, CO 80111
Attn: Bob Blodgett

With a copy to:

Miller & Associates Law Offices, LLC
700 17th Street Suite 2200
Denver CO 80202

7.7 Assignment. Neither District shall assign its rights or obligations hereunder without the prior, express and written consent of the other District.

7.8 No Third Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or sub-contractor of either District. Absolutely no third party beneficiaries are intended by this Agreement. Any third-party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

7.9 Entire Agreement. This Agreement, including the items referenced herein or to be attached in accordance with the provisions of this Agreement, constitutes the entire agreement among the Parties pertaining to the subject matter of this Agreement and supersedes all prior and contemporaneous agreements and understandings of the Parties as to the subject matter of this Agreement. No representation, warranty, covenant, agreement or condition not expressed in this Agreement shall be binding upon the Parties or shall change or restrict the provisions of this Agreement.

7.10 Multiple Fiscal Year Obligation. The Districts understand that each is subject to TABOR and that the obligations herein represent a multiple fiscal year obligation of CPVMD to impose a mill levy and remit the O&M Revenues to the Coordination District. The Coordination District has obtained voter approval for this Agreement as a multiple fiscal year obligation and CPVMD is expected to obtain voter approval for this Agreement on November 5, 2013 (the "TABOR Election"). Therefore, the Districts acknowledge that the provisions of TABOR are

met for calendar year 2014 and after through the term of this Agreement. Notwithstanding the foregoing, the provisions of this Agreement shall become effective upon the eligible electors of CPVMD approving the Agreement at the TABOR Election, or at a subsequent CPVMD election.

7.11 Colorado Constitutional Matters. If any provision of this Agreement is declared void or unenforceable due to a purported violation of TABOR, then the District involved in such violation shall perform such tasks as may be necessary to cure such violation, including, but not limited to, acquiring such voter approvals, either in advance of, or following, an action as may be allowed by law.

7.12 Filing With Securities Commissioner. In the event that a filing of this Agreement with the Colorado Securities Commissioner becomes necessary to validate any or all of the provisions of this Agreement, the Districts shall promptly make such filing.

7.13 Governmental Immunity. Nothing herein shall be construed as a waiver of the rights and privileges of either District pursuant to the Colorado Governmental Immunity Act, §§ 24-10-101, *et seq.*, C.R.S., as amended from time to time.

7.14 Fair Dealing. In all cases where the consent or approval of one District is required before the other District may act, or where the agreement or cooperation of either or both Districts is separately or mutually required as a legal or practical matter, then in that event the Districts agree that each will act in a fair and reasonable manner with a view to carrying out the stated intents and goals of this Agreement as the same are set forth herein, subject to the terms hereof; provided, however, that nothing herein shall be construed as imposing on either District any greater duty or obligation to the other District than that which already exists as a matter of Colorado law, including, but not limited to, any fiduciary duty or other responsibility greater than that of reasonable special districts contracting at arm's length.

7.15 Districts To Exercise Good Faith. Each of the Districts agree to devote its respective best efforts and to exercise good faith in implementing the provisions of this Agreement.

7.16 Force Majeure. Either District shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by a cause beyond its control, including, but not limited to: any incidence of fire, flood, or strike; acts of God; acts of the Government; war or civil disorder; violence or the threat thereof; severe weather; commandeering of material, products, plants, or facilities by the federal, state, or local government; national fuel shortage; when satisfactory evidence of such cause is presented to the other District, and provided further, that such nonperformance is beyond the reasonable control of, and is not due to the fault or negligence of, the District not performing.

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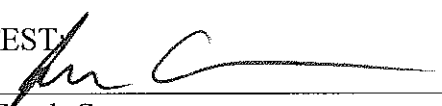
IN WITNESS WHEREOF, the Districts have set their hands effective as of the day and year first above written.

CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision of the State of Colorado



By: Amy Cara, President

ATTEST:




By: Frank Cannon,
Treasurer and Secretary

CENTRAL PLATTE VALLEY COORDINATION METROPOLITAN DISTRICT,
a quasi-municipal corporation and political subdivision of the State of Colorado



By: Amy Cara, President

ATTEST:

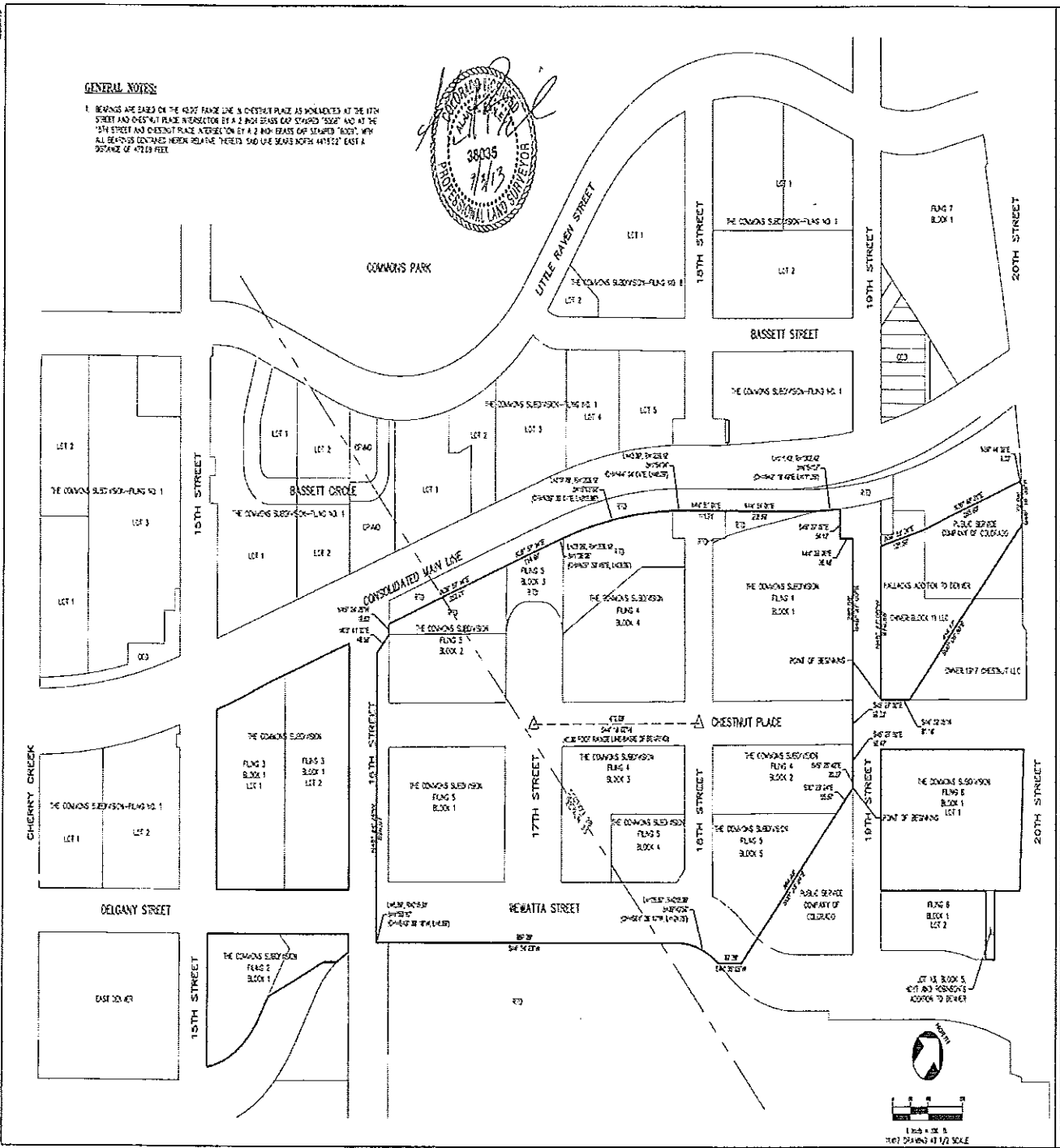


By: Frank Cannon,
Treasurer and Secretary

Exhibit A

GENERAL NOTES:

1. BEARINGS ARE BASED ON THE 4352' PLANE LINE N. CHESTNUT PLACE AS MONUMENTED AT THE 17TH STREET AND CHESTNUT PLACE INTERSECTION BY A 2" NON-STEEL GUN STAMPED "5522" 4.00' AT THE 15TH STREET AND CHESTNUT PLACE INTERSECTION BY A 2" NON-STEEL GUN STAMPED "5522". ALL BEARINGS CONTAINED HEREIN RELATIVE THERETO. SAID GUN BEARS NORTH 44°51'22" EAST A DISTANCE OF 471.63 FEET.



CENTRAL PLATTE VALLEY METROPOLITAN DISTRICT
 2013 BOUNDARY LEGAL EXHIBIT

DATE	1/13/13
PROJECT NO.	113021518
PROJECT NAME	113021518

DISTRIBUTION	1
NO. OF COPIES	1
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