

CITY OF WHEAT RIDGE, COLORADO  
RESOLUTION NO. 18  
Series of 2011

**TITLE: A RESOLUTION APPROVING A CONTRACT WITH THE CITY OF EDGEWATER FOR THE MAINTENANCE OF STREETS THAT ARE COMMON TO BOTH CITIES**

**WHEREAS**, the City Council wishes to re-surface a portion of 29<sup>th</sup> Avenue which is in Edgewater; and

**WHEREAS**, the City has negotiated a contract with the City of Edgewater for the addition of the portion of 29<sup>th</sup> Avenue which is in Edgewater in the City's 2011 Overlay Project; and

**WHEREAS**, the Contract provides for the City of Edgewater to re-surface a portion of 26<sup>th</sup> Avenue, which is located in Wheat Ridge.

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

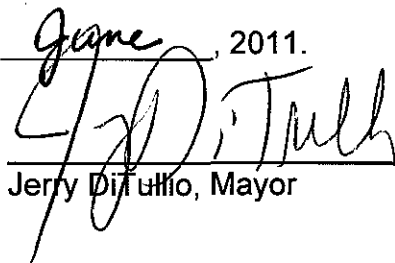
1. **Contract Approved**

The Contract between the City and the City of Edgewater for the maintenance of streets that are common to both cities is hereby approved and the Mayor and City Clerk are authorized and directed to execute the same.

2. **Effective Date:** \_\_\_\_\_.

This Resolution shall be effective immediately upon adoption.

**DONE AND RESOLVED** this 13<sup>th</sup> day of June, 2011.

  
\_\_\_\_\_  
Jerry DiTullio, Mayor

ATTEST:



\_\_\_\_\_  
Michael Snow, City Clerk



## AGREEMENT

**THIS AGREEMENT** is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2011 ("Effective Date"), by and between the **CITY OF EDGEWATER, COLORADO**, a Colorado municipal corporation, (hereinafter referenced as "Edgewater"), and the **CITY OF WHEAT RIDGE, COLORADO**, a Colorado municipal corporation (hereinafter referred to as "Wheat Ridge").

## RECITALS

**WHEREAS**, Wheat Ridge and Edgewater are neighboring municipalities that share a common boundary line within certain public rights-of-way, including West 26<sup>th</sup> Avenue and West 29<sup>th</sup> Avenue, as illustrated by **Exhibit A**, attached hereto and incorporated herein by this reference; and

**WHEREAS**, the portions of West 26<sup>th</sup> and 29<sup>th</sup> Avenues that separate the two jurisdictions must be maintained by repaving said portions in the future; and

**WHEREAS**, the parties agree that the entire width of the paved portions of these rights-of-way should be repaved at one time by one party, rather than in pieces by both parties; and

**WHEREAS**, the parties therefore wish to enter into an agreement under which each party assumes responsibility for paving the entire width of some portions of these two Avenues upon terms and conditions that fairly reflect each party's proportionate ownership in each.

## COVENANTS

**NOW THEREFORE**, in consideration of the recitals, covenants, and promises herein set forth and other good and valuable consideration herein receipted for, the parties agree as follows:

1.0 Repaving Responsibilities. Wheat Ridge agrees to repave the entirety of the currently-paved portion of West 29<sup>th</sup> Avenue that separates Wheat Ridge and Edgewater, as illustrated by **Exhibit A**. Edgewater consents to Wheat Ridge repaving the portion of West 29<sup>th</sup> Avenue that lies within Edgewater's boundaries.

Edgewater agrees to repave the currently-paved width of a portion of the length of West 26<sup>th</sup> Avenue separating Wheat Ridge and Edgewater, as illustrated by **Exhibit A**. Subject to the requirements of Section 2.0 below, Edgewater may designate which portion(s) of West 26<sup>th</sup> Avenue to repave. Wheat Ridge consents to Edgewater repaving any such portion(s) of West 26<sup>th</sup> Avenue that lie within Wheat Ridge's boundaries.

2.0 Edgewater to Provide Credit Towards 26<sup>th</sup> Avenue Repavement. The parties contemplate that Wheat Ridge will complete the repaving of West 29<sup>th</sup> Avenue under this Agreement before Edgewater will complete the repaving of West 26<sup>th</sup> Avenue. The parties agree that a reasonably accurate estimate of Edgewater's proportionate share of the cost of repaving West 29<sup>th</sup> Avenue is twenty thousand dollars (\$20,000). Edgewater agrees to provide, and Wheat Ridge agrees to accept, as consideration for Wheat Ridge completing its repaving obligations under this Agreement first, a credit of twenty thousand dollars (\$20,000) to be applied to Wheat Ridge's proportionate share of the cost of repaving a portion of West 26<sup>th</sup> Avenue when that work is performed by Edgewater. The parties agree that the bargained-for

consideration hereunder is a credit of twenty thousand dollars (\$20,000) and is not the repaving of any particular area of West 26<sup>th</sup> Avenue by Edgewater. Once earned by Wheat Ridge, this credit shall not terminate until Edgewater expends twenty thousand dollars (\$20,000) repaving areas of West 26<sup>th</sup> Avenue within Wheat Ridge or until the credit is applied to another project pursuant to Section 4.0 below.

3.0 Term. This Agreement shall be and remain in effect from the Effective Date until each party performs its repaving obligations as set forth in Section 1.0 hereof or until all credits earned hereunder have been otherwise exhausted.

4.0 Failure to Repave. In the event either party fails to perform its repavement obligations as set forth in Section 1.0 above, the parties agree to negotiate in good faith to apply an equitable credit or alternative agreement to another public project in which each has an interest. Each party agrees that it is not entitled to any cash payment in lieu of or as damages for the other party's failure to perform its repavement obligations hereunder.

5.0 Notice of Projects. Each party agrees to provide the other with reasonable advance notice of any repaving project.

6.0 Liability. Each party shall be responsible for its own negligent acts. To the extent permitted by law, each party shall reimburse the other party for any costs, expenses or legal fees that either party may incur for any liability resulting from the negligent acts of the other party in its performance of its obligations under this Agreement.

7.0 Notices. Any notices required or permitted hereunder shall be sufficient if personally delivered or if sent by First Class U.S. mail, postage prepaid, addressed as follows:

If to Wheat Ridge:

City Manager  
City of Wheat Ridge  
7500 W. 29<sup>th</sup> Avenue  
Wheat Ridge, Colorado 80033

If to Edgewater:

City Manager  
City of Edgewater  
2401 Sheridan Blvd.  
Edgewater, Colorado 80214

8.0 No Waiver of Immunity. Each party, its officers and its employees are relying on, and do not waive or intend to waive by any provision of this Agreement, the monetary limitations (presently one hundred fifty thousand dollars (\$150,000) per person and six hundred thousand dollars (\$600,000) per occurrence) or any other rights, immunities, and protections provided by the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, et seq., as amended, or otherwise available to it, its officers and employees.

9.0 Amendments to Agreement. No changes, alterations or modifications to any of the provisions hereof shall be effective unless contained in a written agreement signed by both parties.

10.0 Entire Agreement. This Agreement shall constitute the entire agreement between the parties hereto and shall supersede all prior contracts, proposals, representations, negotiations and letters of intent, whether written or oral, pertaining to the subject matter of this Agreement.

11.0 Situs, Venue and Severability. The laws of the State of Colorado shall govern the interpretation, validity, performance and enforcement of this Agreement. For the resolution of any dispute arising hereunder, venue shall be in the Courts of the County of Jefferson, State of Colorado. If any provision of this Agreement shall be held to be invalid or unenforceable, the validity and enforceability of the remaining provisions of this Agreement shall not be affected thereby.

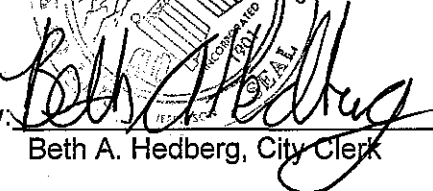
12.0 Paragraph Headings. Paragraph headings are inserted for convenience only and in no way limit or define the interpretation to be placed upon this Agreement.


13.0 Binding Agreement. This Agreement shall be binding upon and for the benefit of the parties hereto, their successors and assigns.

14.0 ARTICLE X, SECTION 20/TABOR The parties understand and acknowledge that each of them is subject to Article X, § 20 of the Colorado Constitution ("TABOR"). The parties do not intend to violate the terms and requirements of TABOR by the execution of this Agreement. 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, the obligations of each party are expressly dependent and conditioned upon the continuing availability of funds beyond the term of the current fiscal period ending upon the next succeeding December 31. Financial obligations of each party payable after the current fiscal year are contingent upon funds for that purpose being appropriated, budgeted, and otherwise made available in accordance with the rules, regulations, and resolutions of such party and other applicable law. Notwithstanding any other provision of this Agreement concerning termination or term, upon either party's failure to appropriate such funds, this Agreement shall automatically terminate. Each party agrees to provide the other with thirty (30) days' notice of its intent to fail to appropriate funds for purposes of this Agreement.


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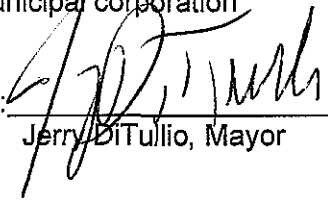
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year first above written.

**EDGEWATER, COLORADO**  
ATTEST  
By:   
Beth A. Hedberg, City Clerk

**EDGEWATER, COLORADO**, a Colorado municipal corporation  
By:   
Bonnie McNulty, Mayor

**WHEAT RIDGE:**

ATTEST:  
By:   
Michael Snow, City Clerk

**WHEAT RIDGE, COLORADO**, a Colorado municipal corporation  
By:   
Jerry DiTullio, Mayor



**EXHIBIT A**

[ILLUSTRATION OF BORDERING AVENUES]

LAKESWOOD

PIERCE ST

OTIS ST

OTIS CT

OTIS CT

31ST AVE

OTIS S

OTIS CT

NEWLAND CT

29TH AVE

30TH AVE

25TH LN

1,650'

NEWLAND ST

NEWLAND ST

31ST AVE

MARSHALL ST

LAMAR ST

30TH AVE

LAMAR ST

EDGEWATER

KENDALL ST

KENDALL ST

JAY ST

JAY S

JAY ST

EXHIBIT "A"

INGALLS ST

INGALLS CT

1,150'

32ND AVE

24TH AVE

28TH AVE

29TH PL

INGALLS ST

HARLAN ST

HARLAN ST

340'

GRAY ST

GRAY ST

GRAY ST

WHEAT RIDGE

25TH AVE

FENTON ST

FENTON ST

445'

EATON ST

EATON ST

DEPEW ST

DEPEW ST

27TH AVE

CHASE ST

CHASE ST

CHASE ST

28TH AVE

980'

BENTON ST

BENTON ST

BENTON ST

30TH AVE

26TH AVE

AMES ST

SHERIDAN BLVD