



MEETING DATE: JANUARY 13, 2014

TO: Members of City Council
FROM: City Council President Keith King
SUBJECT: WORK SESSION AGENDA

The Work Session meeting of the City Council of Colorado Springs is scheduled to commence on Monday, January 13, 2014, at 1:00 p.m. at City Hall, 107 N. Nevada Avenue, in Council Chambers.

1. CALL TO ORDER

2. CHANGES TO THE WORK SESSION AGENDA

3. REGULAR MEETING COMMENTS

4. DECEMBER 9, 2013 WORK SESSION MINUTES

5. EXECUTIVE SESSION

A. Open Executive Session

1. Jimmie Crow v. City of Colorado Springs, d/b/a Memorial Health System; Terry L. Huskins; Jeff Johnson; Dr. Patrick Faricy, M.D.; and Michael Scialdone; Case No. 13-cv-02842-RJB, U.S. District Court for the District of Colorado

Recommendation of the Civil Action Investigation Committee: authorize the City to represent the City, Mr. Huskins, Mr. Johnson, Dr. Faricy and Mr. Scialdone as required by the Colorado Governmental Immunity Act.

2. Briefing on El Paso County's recent adoption of 1041 regulations pertaining to airports

The City Attorney's Office and Airport staff will brief City Council on the City's response to recently adopted El Paso County 1041 regulations pertaining to airports. Any legal questions that may arise during discussion of this Open Executive Session item may be discussed in Closed Executive Session at the Council's request.

B. Closed Executive Session

1. In accord with City Charter art. III, § 3-60(d) and its incorporated Colorado Open Meetings Act, C.R.S. § 24-6-402(4)(b) and (e), the City Council, in Open Session, is to determine whether it will hold a Closed Executive Session. The issues to be discussed involve: (1) legal advice and consultation with the City Attorney's Office regarding a pending litigation matter; (2) legal advice and consultation with the City Attorney's Office related to a regulatory matter discussed in Open Executive Session, if requested by the City Council; and (3) legal advice, consultation, and negotiation strategy discussion with the City Attorney's Office related to a lease matter that may be subject to negotiation.

The President of Council shall poll the City Councilmembers, and, upon consent of two-thirds of the members present, may hold a Closed Executive Session. If consent to the Closed Executive Session is not given, the item may be discussed in Open Session or withdrawn from consideration.

6. STAFF AND APPOINTEE REPORTS

- A. Agenda Planner Review – Eileen Gonzalez, Council Administrator
- B. Memorial Health System Enterprise Update - Kara Skinner, Chief Financial Officer

7. PRESENTATIONS FOR GENERAL INFORMATION

- A. Update on Status of the I-25/Cimarron Interchange Design-Build Project – Dave Lethbridge, Public Works Director and Kathleen Krager, Transportation Planning Manager
- B. Regional Stormwater Task Force – Briefing on Results of 2013 Public Survey, Dave Munger, President, Council of Neighbors and Organizations (CONO)/Stormwater Task Force Communications Subcommittee
- C. Colorado Wildland Fire & Incident Management Academy – Cheryl Dalton, Liaison Officer

8. ITEMS FOR INTRODUCTION

- A. A Resolution Reinstating Limitations on Judgments and Rescinding Portions of Resolution Nos. 82-89 and 6-99 Pertaining to Damage Limitations set forth in the Colorado Governmental Immunity Act, C.R.S. § 24-10-101, Et Seq. - Kara Skinner, Chief Financial Officer; and Michael Sullivan Human Resources Director; Victoria McColm, Risk Manager
- B. Proposed Ordinances & Resolution Relating to Council's Confirmation Process for Mayoral Appointees
 - 1. An Ordinance Amending Section 201 of Part 2 of Article 2 of Chapter 1 of the Code of the City of Colorado Springs 2001, as Amended, Pertaining to the Confirmation Process for Mayoral Appointees – Councilmember Don Knight and Councilmember Andy Pico
 - 2. An Ordinance Amending Section 303 of Part 3 of Article 2, Chapter 1 of the Code of the City of Colorado Springs 2001, as Amended, Pertaining to the Confirmation Process for Mayoral Appointees – Councilmember Don Knight and Councilmember Andy Pico
 - 3. A Resolution Adopting an Amendment to the "City of Colorado Springs Rules and Procedures of City Council," Relating to General Procedures for Confirmation of Mayoral Appointees - Councilmember Don Knight and Councilmember Andy Pico
- C. Powerwood No. 7 and Northgate Estates No. 2 Annexation Agreement - Peter Wysocki, Planning & Development Director and Larry Larsen, Senior Planner
- D. Amendments to Sections 103, 105 and 705 of Chapter 7 of the Code of the City of Colorado Springs, 2001, as Amended, Pertaining to Requirements for Human Service Establishments – Peter Wysocki, Planning & Development Director and Larry Larsen, Senior Planner
- E. Introduction of Standardized Intergovernmental Agreement Resolution Format for CDOT Funded Projects in 2014 –Wynetta Massey, Interim City Attorney and Public Works Staff
- F. An Ordinance Amending Section 206 (Possession Of Marijuana) Of Part 2 (Other Dangerous Weapons And Substances) Of Article 7 (Dangerous Weapons And Substances) Of Chapter 9 (Public Offenses) Of The Code Of The City Of Colorado Springs 2001, As Amended, Pertaining To Possession Of Marijuana At Indoor City Facilities, And Providing Penalties For The Violation Thereof. – Dan Gallagher, Interim Aviation Director, And Pete Carey, Chief Of Police.

9. ITEMS UNDER STUDY

- A. Ordinance Restricting City Council's Use of Eminent Domain– Councilmember Joel Miller

10. COUNCILMEMBER REPORTS AND OPEN DISCUSSION

11. ADJOURN

CITY COUNCIL WORK SESSION MEETING
CITY OF COLORADO SPRINGS
DECEMBER 9, 2013

Present: President King, President Pro Tem Bennett, Councilmembers Collins, Gaebler, Knight, Martin, Miller, Pico, and Snider. Also present, Chief of Staff Neumann and Legislative Counsel Massey.

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1. **CALL TO ORDER**

City Clerk Johnson called the roll. All Councilmembers were present.

2. **CHANGES TO THE AGENDA**

Council Administrator Gonzalez stated agenda item 7-B, *Presentation by I-25 Economic Development Coalition*, would be postponed indefinitely.

3. **DECEMBER 10, 2013, REGULAR MEETING COMMENTS**

Councilmember Knight stated that he will be calling items 5-B6 and 5-B7 off tomorrow's Consent Calendar.

4. **REVIEW OF WORK SESSION MINUTES**

The Work Session Minutes of November 20 and November 25, 2013, were approved with no changes.

5. **EXECUTIVE SESSION**

Deputy City Attorney Tom Florczak read the request to enter into Closed Executive Session. Consensus of Council approved the Closed Executive Session.

6. **STAFF AND APPOINTEE REPORTS**

A. Agenda Planner Review

There were no requested changes to the Agenda Planner.

B. El Paso County Emergency Services Agency 2012 Audit Report

There was no discussion relative to the standard 2012 Audit Report.

7. **PRESENTATIONS FOR GENERAL INFORMATION**

A. Colorado Health Foundation Update to City Council

Jon Medved, Colorado Springs Health Foundation Chair, provided a brief presentation on the Foundation's background with a status update on their progress, thus far, on Council's requested work assignments.

Councilmembers commented on matters relative to the budget and the anticipated use of funds. It was requested the Foundation ensure that "Preventative Programs" be included in the mission statement as originally expressed during initial discussions.

B. Presentation by I-25 Economic Development Coalition

This item was postponed indefinitely.

8. ITEMS FOR INTRODUCTION

- A. An Ordinance Excluding Certain Property from the Boundaries of the Barnes & Powers North Business Improvement District
- B. An Ordinance Including Certain Property into the Boundaries of the Barnes & Powers South Business Improvement District

Carl Schueler, Land Use Review Senior Planner, provided a presentation on the two related Business Improvement District matters. He stated the two are simply an exclusion of one square foot of property from one BID and inclusion of that property into another BID. Mr. Schueler described the plan is to have the first reading on January 14, 2014, under New Business and, with Council's approval, the second reading would be on January 28, 2014.

Councilmember Knight requested that a letter be sent to Costco to allow an opportunity to confirm they agree with the intended transaction. Mr. Schueler agreed to send a letter but stated he could not confirm a response would be received by January 14th.

C. Proposed Ordinances & Resolution Relating to Council's Confirmation Process for Mayoral Appointees

Councilmember Knight described the proposed ordinances and resolution. He stated the desire is to have the first reading in early January and the second reading at the last meeting in January in order to finalize prior to City Attorney/Chief Legal Officer Chris Melcher's departure from his position.

Chief of Staff Neumann responded that Mike Sullivan, Human Resource Director, was performing background research on best practices, what has worked successfully for Denver and other cities that have a Strong Mayor form of government, and should have the research completed within two weeks.

9. **ITEMS UNDER STUDY**

There were no items presented for discussion.

10. **COUNCILMEMBER REPORTS AND OPEN DISCUSSION**

- A. Councilmember Bennett asked what communications with the County have taken place relative to the City's emergency services contract. Fire Chief Riley responded that they have been in negotiations and, at this time, he cannot disclose the nature of the negotiations. Councilmember Martin wanted to confirm that the collaboration with the County transpires to ensure seamless transport and continuity of care for patients.
- B. Councilmember Knight provided comments relative to the I-25 corridor project. He suggested the committee consider revising the featured exits to include the exit to the Colorado Springs Airport and also the Cimarron exit where traffic flows either east of the freeway towards downtown Colorado Springs or west towards Old Colorado City and Pikes Peak.
- C. Councilmember Martin described the renovations at City Hall and the local artwork being procured from students of colleges, universities, and even some elementary schools, that will be displayed throughout City Hall on a rotational basis. She stated there will be an art reception in January and the public will be invited to meet the artists.

Councilmember Martin also informed Council the next LART meeting is scheduled for January 9th from 2:30 until 5:30 p.m. in the Pikes Peak Room and stated there will be three topics of discussion.

- D. Councilmember Snider requested that Council prepare a request to the Mayor asking to separate the January 16th meeting on *City of Champions* and Stormwater issues into two separate meetings. President King agreed this would be his preference and will prepare a letter to the Mayor asking to separate the meetings.
- E. Councilmember Miller stated he plans to bring forward to Council an item relative to Council's powers over eminent domain.
- F. President King described e-mails he had prepared that had been leaked to the press prematurely and emphasized a need to maintain confidentiality of Councilmember internal communications.
- G. Councilmember Miller asked about the funding of *City of Champions* by the City. He requested a full briefing on the information.

11. **ADJOURN**

Council adjourned at 3:38 p.m.



DATE: December 9, 2013

TO: President and Members of City Council

FROM: City Attorney's Office

SUBJECT: *Jimmie Crow v. City of Colorado Springs, d/b/a Memorial Health System; Terry L. Huskins; Jeff Johnson; Dr. Patrick Faricy, M.D.; and Michael Scialdone; Case No. 13-cv-02842-RJB, U.S. District Court for the District of Colorado*

NATURE OF THE CASE

Plaintiff Crow's complaint against the City, d/b/a Memorial Health System (MHS), is brought under the Americans With Disabilities Act (ADA), 42 U.S.C § 1983, the Age Discrimination Act, Title VII, and state law. Crow alleges that the City failed to follow their own policies and procedures, wrongfully terminated his employment by refusing to process his application for reasonable accommodation under the ADA, discriminated against him based on age and sex, and for the City's determination that he was unable to perform the essential functions of his position even with accommodations.

Prior to this Complaint, Crow filed charges with the EEOC (alleging the same violations as are in the complaint) in December, 2012, resulting in his request for the EEOC to issue a Right to Sue Notice when the EEOC did not conclude its investigation after 180 days had passed. The Right to Sue Notice was issued July 16, 2013, and Crow's complaint was subsequently filed October 17, 2013.

COMPLAINT

Crow filed the original complaint against Memorial Health System, Terry Huskins, Jeff Johnson, Dr. Patrick Faricy, and Michael Scialdone. He then amended his complaint to reflect the Defendant as the City of Colorado Springs, d/b/a Memorial Health System (other Defendants remained unchanged). Crow alleges that the City discriminated against him based on his age and sex, persistently refused to process his application for reasonable accommodation, and wrongfully terminated him from employment with MHS.

Crow asserts the following claims against MHS:

1. Violation of the Americans With Disabilities Act (ADA), as amended, 42 U.S.C. § 12101, *et. seq.*
2. Violation of the Age Discrimination in Employment Act, 29 U.S.C. §623(a)(1)
3. Violation of the Civil Rights Act, Title VII, 42 U.S.C. § 2000e-(2)(a)
4. Breach of Contract (Employment Agreement)

Crow asserts the following claims against the individually named defendants (Huskins, Faricy, Johnson, Scialdone):

1. Due Process violation of the Fourteenth Amendment of the U.S. Constitution (42 U.S.C. § 1983)
2. Equal Protection violation of the Fourteenth Amendment to the U.S. Constitution (42 U.S.C. § 1983)

Crow seeks back pay, reinstatement or front pay, compensatory damages, consequential damages, liquidated damages, punitive damages, damages for past and future emotional distress, pre and post judgment interest, costs and attorney fees, and any other relief to which he may be entitled.

RECOMMENDATION

The Civil Action Committee¹ met on December 4, 2013 and voted unanimously in favor of having the City act as the legal representative of the individually named defendants as required by the Colorado Governmental Immunity Act, C.R.S. § 24-10-110 and City Code § 1.4.302, reserving the City's right to not pay any award of punitive damages. It is recommended, therefore, that the City Council vote to approve the City's representation of Terry L. Huskins, Jeff Johnson, Dr. Patrick Faricy, M.D., and Michael Scialdone in the above-referenced matter, with a reservation of rights pertaining to punitive damages.

¹ Pursuant to City Code §1.4.302(C), the Civil Action Committee in this circumstance would consist of the City Attorney, the Risk Manager, and the head of the affected employee's department or, more specifically, the Executive Director of Memorial. Due to recusal for perceived potential conflicts of interest, the Civil Action Committee consisted of the City Attorney's designee and the Risk Manager.



WORK SESSION AGENDA ITEM

COUNCIL MEETING DATE: January 13, 2014

To: President and Members of City Council

From: Office of the City Attorney

Date: 1/7/2014

Re: El Paso County 1041 Regulations Relating to Airports

Background

El Paso County recently adopted amendments to its regulations implementing the Areas and Activities of State Interest Act, C.R.S. § 24-65.1-101 *et seq.* (“HB 1041”), to include Site Selection and Expansion of Airports. The effective date of the amended regulations is March 11, 2014.

In 1974, HB 1041 was enacted to authorize state and local governments to make land use planning decisions in matters of state interest. HB 1041 allows local governments, including cities and counties, to identify, designate, and regulate areas and activities of state interest through a local permitting process. The purpose of HB 1041 is to allow local governments to maintain control over certain development projects that may also have statewide impacts. A local government’s designation of an area or activity of state interest triggers the statute’s permitting process. C.R.S. § 24-65.1-501.

In the summer of 2013, the County designated and adopted its initial regulations under HB 1041 for the following areas and activities of state interest (Phase I):

1. Efficient Utilization of Municipal and Industrial Water Projects;
2. Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and/or Major Extension of Existing Domestic Water and Sewage Treatment Systems;
3. Site Selection and Construction of Major Facilities of a Public Utility; and
4. Floodplain Natural Hazard Areas.

In November, the County noticed a public hearing to take place on December 17, 2013, to designate and adopt regulations for the following additional activities of state interest (Phase II):

1. Site Selection and Expansion of Airports;
2. Site Selection of Arterial Highways and Interchanges and Collector Highways;
and
3. Site Selection of Rapid or Mass Transit Facilities

The City did not receive actual notice of the proposed Phase II regulations until November 22, 2013, the Friday before the Thanksgiving holidays and less than 30 days before the December 17, 2013, public hearing at which the Board of County Commissioners (“BoCC”) would consider adopting the regulations. Once aware of the proposed regulations, the City Attorney’s Office and Airport staff worked expeditiously to review and analyze the regulations and was able to meet with County representatives only twice for a limited amount of time prior to the public hearing. The consensus at the conclusion of these meetings was that the item would likely be postponed at the hearing to allow interested parties – including the Airport Advisory Commission – additional time to review and comment on the proposed regulations.

At the public hearing on December 17th, County staff presented the proposed regulations for the BoCC’s consideration and adoption along with a few amendments that were made orally at the hearing. The City submitted written comments (see Attachment #1) and spoke against adoption of the regulations related to airports in their original form. After some discussion on the need for additional time to review, analyze, and possibly further amend the regulations, the BoCC voted unanimously to adopt the regulations and oral amendments (see Attachment #2). The BoCC delayed the effective date of the regulations related to airports until March 11, 2014, to allow a working group to be assembled to further review and analyze the regulations.

Thirty days’ notice is required to place any additional proposed amendments on the BoCC’s agenda for public hearing. C.R.S. § 24-65.1-404. All additional proposed amendments must be drafted and noticed no later than Sunday, February 9, 2014.

The County asked the City to assemble members for a working group to meet with the County’s working group representatives to review and recommend changes to the regulations in anticipation of the March 11, 2014, effective date. No date for such a meeting has been scheduled yet. Airport staff has briefed the Airport Advisory Commission (“AAC”) on the regulations and recommended that the AAC select a member to participate in the working group.

Briefing Points

Airport staff concerns and City Attorney’s Office’s comments include the following key points:

- The regulations are overbroad and outside the County’s jurisdiction as they relate to the Colorado Springs Airport, and they intrude upon the City’s home rule authority
- The regulations and permit criteria are highly subjective and impractical

- As drafted, the regulations are vague and inconsistent with other law
- Some of the regulations are preempted by federal law
- The regulations are duplicative of existing County land use regulations
- The regulations may have unintended consequences of stifling business and the growth of the region

Some of these points are discussed more fully in Attachment #1.

Attachments

- #1 December 17, 2013, Letter from City to BoCC regarding Comments on Proposed Designation of Matters of State Interest Including Additional Activities of State Interest and Adopting Guidelines and Regulations for Additional Activities of State Interest of El Paso County
- #2 December 20, 2013, Letter and copy of final version of regulations from County Attorney regarding El Paso County Guidelines & Regulations for Areas & Activities of State Interest; Chapter 7: Site Selection & Expansion of Airports.

Attachment #1



December 17, 2013

Board of County Commissioners
El Paso County, Colorado
200 South Cascade Avenue, Suite 100
Colorado Springs, CO 80903-2202

RE: Comments on Proposed Designation of Matters of State Interest Including Additional Activities of State Interest and Adopting Guidelines and Regulations for Additional Activities of State Interest of El Paso County

Dear Commissioners:

The City of Colorado Springs ("City") wishes to comment on El Paso County's proposal to adopt amendments to its regulations implementing the Areas and Activities of State Interest Act, C.R.S. § 24-65.1-101 *et seq.* ("HB 1041"). HB 1041 creates an important legal tool for the County to regulate the land use impacts of significant activities and developments constructed within the unincorporated areas of the County.

The City, its staff, and the Airport Advisory Commission have had only a few weeks to review and analyze the proposed regulations. The City's limited review, however, has raised several concerns about the proposed regulations discussed below in this letter. The City's primary concerns are that the proposed coverage of airport activities and operations exceeds that statutory grant of authority and the regulations are vaguely drafted.

No one from the City was invited to consult or coordinate with the County in the drafting process so that these issues could be considered. Consequently, these comments explain the basis for the City's conclusion that HB 1041 does not grant counties the authority to regulate airports within municipalities, and the proposed designation and regulations for airports should not be adopted in their current form.

For the reasons further expressed herein, the City recommends that the County postpone consideration of the proposed regulations for 60-90 days to allow the City, its staff, the Airport Advisory Commission, and any other interested party to coordinate with the County in an attempt to resolve the City's concerns and create a workable solution going forward.

I. Background of HB 1041 and the County's Proposed Regulations

HB 1041 authorizes counties to regulate activities within their "jurisdiction," which is properly interpreted to mean within the unincorporated areas of a county. HB 1041 was enacted in 1974 to address state and local authority with respect to land use planning in matters of state interest at a time when land use in many areas of Colorado remained unregulated. The statute encourages local governments, including cities and counties, to designate listed areas and activities of state interest and to enact regulations for their administration. C.R.S. § 24-65.1-101(2). A local government's designation of an area or activity of state interest triggers the statute's permitting process. C.R.S. § 24-65.1-501.

HB 1041 identifies the areas and activities of state interest that a local government may designate and regulate through a permitting process. C.R.S. §§ 24-65.1-201, 24-65.1-103 & 24-65.1-104. In the summer of 2013 – nearly 40 years after HB 1041 was enacted – the County designated and adopted regulations for the following areas and activities of state interest:

1. Efficient Utilization of Municipal and Industrial Water Projects;
2. Site Selection and Construction of Major New Domestic Water and Sewage Treatment Systems and/or Major Extension of Existing Domestic Water and Sewage Treatment Systems;
3. Site Selection and Construction of Major Facilities of a Public Utility; and
4. Floodplain Natural Hazard Areas

The County refers to those designations and regulations as Phase I. Now, in Phase II of the HB 1041 process, the County seeks to designate and adopt regulations for the following additional activities of state interest:

1. Site Selection and Expansion of Airports;
2. Site Selection of Arterial Highways and Interchanges and Collector Highways; and
3. Site Selection of Rapid or Mass Transit Facilities.

II. The County's Proposed Designation and Regulations for Airports are Flawed in Several Respects

The County's proposed HB 1041 designation and regulations for "Site Selection and Expansion of Airports" as an activity of state interest are flawed in at least the following ways: (1) they are overbroad and impermissibly attempt to regulate incorporated areas of the County; (2) they are highly subjective and impractical for the needs and desires of both the City and the County; (3) as drafted, they are vague, and thus, appear inconsistent with existing local, state, and federal laws; and (4) they may be preempted by federal law as it applies to airports and air transportation.

1. The Proposed Designation and Regulations are Overbroad and Outside the County's Jurisdiction

There is no dispute that HB 1041 includes site selection of airports, arterial highways and interchanges and collector highways, and rapid or mass transit facilities. Those activities are specifically listed in HB 1041 as activities of state interest. C.R.S. § 24-65.1-203(1)(c)-(e). The County, however, goes beyond those activities by including “expansion of [existing] airports” in their proposed HB 1041 designation and regulations. So rather than regulating new airports that might be located in the unincorporated areas of the County, for which the City acknowledges the County's authority, the County regulations, as drafted, would also regulate existing airports located almost entirely within incorporated cities, such as the Colorado Springs Airport. The County's inclusion of “expansion” activities of airports is contrary to HB 1041, which expressly lists only “site selection of airports” as the appropriate activity of state interest.

With respect to the new categories of activities of state interest, the proposed regulations would apply to activities “wholly or partially within unincorporated El Paso County.” Proposed §§ 7.101, 8.101(1) & 9.101(1). We may construe this to mean that the County recognizes that it can regulate only those components of projects, development, construction, expansion, operations, and facilities within the unincorporated areas of the County and not those components located or constructed wholly within the City. However, as discussed more fully below, the County appears to believe that the dynamics of air transportation, facilities, and airspace rights allow it to, in effect, regulate components of airport activities located wholly within incorporated areas of the County (i.e., within the City). Nothing in HB 1041 or any other law gives the County jurisdiction to regulate development within City boundaries.

Counties are political subdivisions of the state with only such powers as the state delegates to them. *Bd. of County Comm'rs of the County of Arapahoe v. Denver Bd. of Water Comm'rs*, 718 P.2d 235, 241 (Colo. 1986). HB 1041 authorizes both cities and counties to designate and regulate only matters of state interest “within ... [their] jurisdiction” C.R.S. § 24-65.1-401(1). HB 1041 does not define “jurisdiction” but implication and analogy to other land use statutes limits the County's jurisdiction to areas and activities within unincorporated areas of the County.

Based upon our initial review of HB 1041 regulations adopted by other Colorado counties, HB 1041 has been applied consistently with traditional zoning and land use principles that limit a county's authority to the “unincorporated territory within the county.”

“The boards of county commissioners of the respective counties within this state are authorized to provide for the *physical* development of the unincorporated territory within the county and for the zoning of all or any part of such unincorporated territory in the manner provided in this part 1.”

C.R.S. §§ 30-28-102 (emphasis added). See also C.R.S. § 30-28-101(12) (defining “unincorporated territory” as “situated outside of cities and towns, so that, when used in

connection with 'territory', 'areas', or the like, it covers, includes, and relates to territory or areas which are not within the boundaries of any city or town"); C.R.S. § 30-28-133(1) (mandating that counties adopt subdivision regulations "for all land within the unincorporated areas of the county"); C.R.S. § 30-28-106(2)(a) & (b) (authorizing counties to develop a regional master plan, "but no such plan shall be effective within the boundaries of any incorporated municipality within the region unless such plan is adopted by the governing body of the municipality...."); C.R.S. § 30-15-401(11)(a)(II) (allowing counties that have obtained municipal separate storm sewer system permits to adopt storm water ordinances applicable to "any property located within the unincorporated portion of the county").

When the state legislature intends to give counties jurisdiction within incorporated areas, it expressly states so. For example, the statute requiring counties to establish public health agencies states that such agencies will have jurisdiction "over all municipal corporations within the territorial limits of the county" unless the municipal corporation maintains its own health agency. C.R.S. § 25-1-506(1). See also C.R.S. § 30-20-504 (allowing a county to establish public improvement districts partially or wholly within municipal boundaries only if the municipality consents). HB 1041 contains no such grant of authority to counties.

The County's proposed regulation may also violate the City's Home Rule authority over zoning and land use. Zoning is generally held to be a matter of "local concern" over which a "home rule" city such as the City has authority granted by the Colorado Constitution. See *City of Colorado Springs v. Securcare Self Storage*, 10 P.3d 1244, 1253 (Colo. 2000). In contrast, "a county's power to zone is delegated by the legislature" through statute. *Id.* Even though HB 1041 allows site selection of airports to be designated as an activity of state interest, the traditional principle of Home Rule city primacy over zoning and land use supports the interpretation that HB 1041 was not intended to expand the County's land use jurisdiction to incorporated areas. The City's Home Rule authority applies to the Colorado Springs Airport, a governmental enterprise function of the City. The City, thus, has exclusive authority to regulate and restrict activities occurring within its incorporated areas. To the extent the County intends to regulate, directly or indirectly, activities in incorporated areas like the airport, the County has overstepped its authority.

A related issue was touched on in a 1994 case deciding whether HB 1041 authorized Eagle County to regulate a transbasin diversion water project of the Cities of Colorado Springs and Aurora. *City of Colorado Springs v. Bd. of County Comm'rs of the County of Eagle*, 895 P.2d 1105 (Colo. Ct. App. 1994). There, Eagle County conceded that it lacked authority under HB 1041 to consider the need for the water project within the Cities and the impact of the project on the Cities. 895 P.2d at 1113. The Court's ruling was limited to affirming that counties may regulate the aspects of a water project that are within the unincorporated area of the county. *Id.*; see also *Denver v. Bd. of County Comm'rs of Grand County*, 782 P.2d 753 (1989) (a water project is a "matter of concern to the area in which the municipality proposes to build and operate the project"). *Eagle County* and other judicial interpretations of HB 1041 provide no

support for the County's assertion of jurisdiction over development activities that are physically within the City.

Neither the language of HB 1041 nor judicial interpretations support the County's authority to regulate development at an existing airport within the City based on presumed effects over unincorporated areas of the County.

2. The Proposed Regulations and Permit Criteria Are Highly Subjective and Impractical

No criteria exist in the proposed regulations to objectively apply the regulations to even the unincorporated areas of the County.

Proposed Section 7.102(9) broadly defines "[e]xpansion of an existing airport" to include "land acquisition, extension of runway(s), development or operational changes that will allow, or are likely to lead to any of the following:

- (a) [use] of the airport by larger or noisier aircraft; ...
- (c) Creation, alteration or expansion of any (i) Airport Navigation Subzone; (ii) Airport Noise Subzone; or (iii) Airport Accident Potential Zone or similarly identified zone(s);
- (d) Any significant increase in air or ground traffic that is likely to disrupt the environment, or cause an impact on the services of existing communities; or
- (e) Construction or alteration of runway lighting or marking that is not otherwise depicted on a County approved plan."

This definition could be construed to require a County permit for any type of activity including construction or any development or operational changes that occur at the Airport within the City that would merely "allow" but not necessarily cause "larger or noisier aircraft" or "increase in air or ground traffic" to the Colorado Springs Airport. So expansion of a terminal to allow more aircraft to use the Airport would need a County permit even though the physical construction would take place wholly in incorporated areas.

The regulations also do not provide objective, threshold criteria for what constitutes a "significant increase in air or ground traffic." As an example, the Colorado Springs Airport current has approximately 1,800 daily enplanements. If just one more flight a day was added by an existing airline at the Airport, the number of daily enplanements could increase by 180, or 10% of total enplanements. Is 10% significant? Is less than 10% significant? Would the County expect the City to obtain a County permit for what clearly is an operational decision within the Colorado Springs Airport's purview?

Moreover, the County's requirements for obtaining the HB 1041 permit are impractical. Rather than referencing an "FAA-approved airport layout plan and accompanying Master Plan," the County proposes generally to require a "plan" that purports to expand on the already stringent FAA plan approval requirements. The County also proposes to require detailed locations and elevations "of existing and proposed streets, highways, transit routes, and fixed transit lines and trails within or directly adjacent to" its defined "Airport Influence Area." Proposed § 7.201(1)(c). The County also seeks to require "location and nature of existing or approved developments and land uses" and "elevation and contours of the ground and elevation of existing structures within the Airport Influence Area." Proposed § 7.201(1)(d) & (e).

The County also proposes to require an unspecified "[f]light pattern map." Proposed § 7.201(2). The detailed type of data that would be needed to submit a flight pattern map of any kind is not readily available and would potentially be prohibitively expensive and take a significant amount of time for the City to compile.

The HB 1041 Permit must also comply with the "relevant criteria at Section 2.405," which include protection of health, welfare and safety of the citizens of the County, financial feasibility, air quality, visual quality, surface water quality, etc. There should be no instance where the County must approve the financial feasibility of a project at the Colorado Springs Airport.

Nor is there a clear need for this information. Both the City and the County already extensively regulate development in and around the Commercial Airport Overlay District surfaces. Colorado Springs City Code § 7.3.506 (adopted 5/9/2006); Land Development Code § 4.3.1 (adopted 10/12/2006). Compliance with FAA regulations in and around these surfaces, which are incorporated into the City and County's existing airport overlay district land use regulations, is also already required. The proposed regulations would be in addition to the existing regulations and would add yet another level of bureaucratic review where it is not necessary.

In sum, the County's proposed "Airport Influence Area" covers approximately 126 square miles of land. The portions of the "Airport Influence Area" over unincorporated areas of the County still comprise more than 65 square miles. It is simply not practical to require the Colorado Springs Airport to present the various contours and elevations within either of these coverage areas or be able to satisfy the County's additional plan and map requirements. The effect of the proposed regulations as they are currently drafted will be to chill and delay any future additional development or expansion of the Colorado Springs Airport. That, in turn, will adversely affect the region as well as the County's economy and revenues.

3. As Drafted, the Proposed Regulations are Vague and Inconsistent with Other Law

The foregoing section of these comments identifies some instances of imprecise drafting by the County. It is not clear whether FAA terms and guidelines were used to

draft the proposed regulations. Proposed Section 7.102(8) defines “clear zone” as an area defined by Federal Aviation Administration (FAA) regulations that extends 3000 feet beyond the end of the runway” The City is unaware of any FAA regulation that defines “clear zone” or any such zone for that matter. Part 77 of the Federal Aviation Regulations contain definitions for the different imaginary surfaces related to airports and runways that the FAA regulates. Those Part 77 surfaces, however, are different than the proposed areas the County intends to regulate.

The proposed regulations are also not sufficiently clear in whether the definitions of “Airport Influence Area,” “Aircraft Navigation Subzone (ANAV),” or “Aircraft Noise Subzone (ADNL)” pertain to the entire area of each of the described subzones or just those over unincorporated areas of the County. And the proposed regulations are not sufficiently clear on whether the subzones are to be established using FAA-defined surfaces or noise contours or the City’s or the County’s defined Commercial Airport Overlay District. Unfortunately, the FAA, City, and County’s existing definitions of these zones are not consistent with each other. These proposed regulations, therefore, provide another level of inconsistency where instead they could be the first step toward making the federal, City, and County regulations more consistent with each other.

4. The Proposed Regulations May Be Preempted by Federal Law

Finally, as noted above, the Colorado Springs Airport and other existing and future airports within the incorporated or unincorporated areas of the County are subject to FAA rules and regulations. Because the FAA already designates and regulates certain airport surfaces, areas, and zones, the proposed regulations may result in duplicative and possibly inconsistent regulation at the federal, state, and local level. While local and state governments have great authority with respect to land use matters, the FAA has generally had sole authority to regulate use of airspace and noise. To the extent the County’s proposed regulations conflict with the FAA airspace or noise regulations, they may be preempted and unenforceable.

In addition, because the Colorado Springs Airport is a joint use airport with Peterson Air Force Base, the proposed regulations may be viewed as an attempt to regulate or restrict military use of the Airport. Further research into the effect of the proposed regulations on the Airport’s joint use status is warranted.

III. Conclusion

The foregoing comments address the City’s initial concerns about the scope of the County’s proposed HB 1041 designation and regulations for airports. The issue does not appear to be whether airports and related subzones should be regulated but whether the County is the appropriate entity to do so. The City has raised valid concerns about the scope and application of the proposed regulations to areas and activities wholly beyond the County’s jurisdiction.

A cooperative approach between the County and the City on land use development issues has been successful in the past and should continue to provide a model for the future. Regrettably, that cooperative approach has not been engaged with regard to these proposed regulations. As a result, the City has had limited opportunity to review and confer with the County on these proposed regulations. Indeed, the Airport Advisory Commission, for which the County has a designated liaison and which may act in an advisory capacity to the El Paso County Board of County Commissioners and the El Paso County Planning Commission, has not had a formal meeting since the City was given notice of the proposed regulations. And the Airport Advisory Commission will not meet before the item is scheduled to be considered for approval by the Board of County Commissioners on December 17, 2013.

The City offers to pursue meaningful discussions with the County about the City's concerns with the proposed regulations. Thoughtful discussions and coordination between the County and the City proved helpful regarding the County's adoption of HB 1041 stormwater and floodplain regulations this summer. That same dialogue can be helpful here as well. The City, therefore, respectfully recommends and requests that the County postpone consideration of the proposed regulations for not more than 90 days to allow further input from the City – and particularly from Airport staff and the Airport Advisory Commission – on the proposed regulations. Only then can an effective regulatory structure be obtained.

Sincerely,

/s/ Britt Haley
Britt Haley
Corporate Division Chief
Office of the City Attorney

Attachment #2

COLEFA EL PASO
CITY ATTORNEY

EL PASO COUNTY



2013 DEC 23 A 10:50

OFFICE OF THE COUNTY ATTORNEY
CIVIL DIVISION

Assistant County Attorneys

M. Cole Emmons
Lori L. Seago
Diana K. May
Kenneth R. Hodges
Steven A. Klaffky

Amy R. Folsom, County Attorney

December 20, 2013

VIA U.S. MAIL AND E-MAIL

Tom Florczak, Esq.
Deputy Chief Attorney
Colorado Springs City Attorney's Office
30 S. Nevada Avenue, suite 501
Colorado Springs, CO 80903

TFlorczak@springsgov.com

Re: El Paso County Guidelines & Regulations for Areas & Activities
Of State Interest; Chapter 7: Site Selection & Expansion of Airports

Dear Mr. Florczak:

The purpose of this letter is two-fold:

- To share with you the final version of the referenced Chapter 7 of the County's HB 1041 Regulations, as adopted on December 17; and
- To invite you to meet with County representatives to discuss any needed additional amendments to Chapter 7.

I enclose redline and clean versions of Chapter 7, as adopted by the Board of County Commissioners on December 17. The redline version shows the amendments that Gerald Dahl orally described to the Board on December 17 and which were adopted. We invite your additional comments on this revised Chapter.

During the December 17 hearing, the Board directed County staff to meet with a working group of your choice to review the Chapter 7 regulations and make recommendations for changes, in anticipation of the March 11, 2014 public hearing and effective date for Chapter 7.

As you may know, C.R.S. 24-65.1-404 requires 30 days advance notice of a hearing to adopt or amend the regulations. To meet this deadline, we need to commence meetings quickly. Our working group representatives will be a staff member from the County Attorney's Office, a staff member from the Development Services Department, and Gerald Dahl, the County's special counsel. We are available to meet at any time on January 7, 8, 9 or 10. Please contact either me

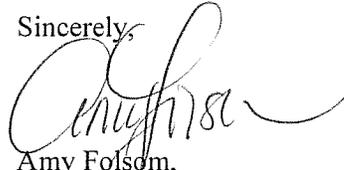
200 S. CASCADE AVENUE
OFFICE: (719) 520-6485



COLORADO SPRINGS, CO 80903
FAX: (719) 520-6487

at 520-6454, amyfolsom@elpasoco.com or my Paralegal, Edith Anderson, at 520-6494, edithanderson@elpasoco.com to confirm a meeting date and time.

Sincerely,



Amy Folsom,
County Attorney

Enclosure

cc w/out encl.: Board of County Commissioners
Jeff Greene, County Administrator
Gerald Dahl, Esq., Special Counsel
Cole Emmons, Sr. Assistant County Attorney
Mark Gebhart, Deputy Director, Development Services Depart

CHAPTER 7

SITE SELECTION AND EXPANSION OF AIRPORTS

Article 1 General Provisions

7.101 Designation of Activity of State Interest

7.102 Purpose and Intent

7.103 Definitions

7.104 Applicability

Article 2 Permit Application and Procedure

7.201 Application Submission Requirements

7.202 Review Criteria

Article 1 General Provisions

7.101 Designation of Activity of State Interest

The following activity of state interest is hereby designated: site selection and expansion of airports. No person may engage in development, including site selection, construction, expansion, reoperation, relocation or other significant change in use of such activity wholly or partially within unincorporated El Paso County without first obtaining a permit pursuant to these Regulations.

7.102 Purpose and Intent

- (1) The purpose and intent of these regulations contained in this Chapter is to facilitate the administration of airport location and expansion by establishing requirements which must be met before an airport site may be selected or expanded.
- (2) Airport site selection or expansion shall be accomplished in such a manner as to minimize dangers to public health and safety or to property including dangers from aircraft crashes, aircraft noise, traffic congestion, and air pollution.
- (3) Airports shall be located and expanded in a manner which will minimize disruption to existing communities, will minimize the impact on existing community services, and will complement the economic and transportation needs of the state and the area.
- (4) Airport location or expansion decisions shall consider the type of development which will occur within the Airport Influence Area, as hereinafter defined, and the effects of such development on wildlife, historic sites, and the ability to provide services to such development.

7.103 Definitions

For the purpose of this Chapter, the following definitions will apply:

- (1) *Accident Potential Zone I (APZ-1) [Class A Runway Accident]* means an area 3000 feet wide extending 1500 feet either side of the centerline of the airport runway and 5000 feet long located beyond the Clear Zones at each end of the runway.
- (2) *Accident Potential Zone II (APZ-2) [Class A Runway]* means an area 3000 feet wide extending 1500 feet either side of the centerline of the airport runway and extending 7000 feet beyond APZ-1.
- (3) *Aircraft* means any FAA-certified vehicle used or designed for aviation or flight in the air, and includes helicopters
- (4) *Airport* means any municipal or county airport or airport under the jurisdiction of an airport authority. *Airport* includes an airport expansion and the associated

Airport Influence Area. *Airport* also includes general aviation or reliever airports, and any area of land or water which is used or intended for the landing and takeoff of aircraft, any appurtenant areas which are used or intended for airport buildings or other airport facilities or rights-of-way, and all airport buildings and facilities, all with respect to its use for airport purposes. *Airport* does not include a personal airstrip as defined and regulated by Chapter 1 (definitions) and Table 5-1 (principal uses) of the El Paso County Land Development Code.

- (5) *Airport Influence Area* includes the Airport Noise Subzone, the Aircraft Navigation Subzone and the Accident Potential Zones I and II *or, alternatively, similarly identified zones which are applicable to the airport in question.* Such area is included as a part of the designated activity and development thereof is controlled under these regulations because of natural or man-made physical features, relationships to airport access, effects of secondary impacts, or other special circumstances found by the Board of County Commissioners.
- (6) *Aircraft Navigation Subzone (ANAV)* means an area indicated at and above the ground as depicted on the Commercial Airport District Map or other maps adopted by the County for other airports.
- (7) *Airport Noise Subzone (ADNL)* means the area indicated by lines of increasing projected annual average noise exposure (DNL) from 65 DNL to 70 DNL, 70DNL to 75DNL, and 75DNL to 80DNL. The boundary of the ADNL reflects the 65 DNL line.
- (8) *Applicant* means any person, including a municipality, special district or authority, or a state or federal entity, proposing to locate or expand an airport, in this jurisdiction and who applies for a permit under the provisions of this regulation.
- (9) *Clear Zone* means an area defined by Federal Aviation Administration (FAA) regulations that extends 3000 feet beyond the end of the runway, where the potential for aircraft accidents is considered measurable enough to warrant additional land use restrictions.
- (10) *Site Selection* means the process for determining the location of a new airport or the expansion or relocation of an existing airport. Expansion of an existing airport also includes land acquisition, extension of runways and development or operational changes, and any development or operational change which allows, or is likely to lead to any of the following:
 - (a) Use of the airport by larger or noisier aircraft *beyond that permitted for the airport by existing County studies or approvals;*
 - (b) First time jet aircraft use;
 - (c) Creation, alteration or expansion of any (i) Airport Navigation Subzone; (ii) Airport Noise Subzone; or (iii) Airport Accident Potential Zone or

similarly identified zone(s) *or, alternatively, similarly identified zones which are applicable to the airport in question;*

- (d) Any significant increase in air or ground traffic that is likely to disrupt the environment, or cause an impact on the services of existing communities; or
- (e) Construction or alteration of runway lighting or marking that is not otherwise depicted on a County approved plan, *to the extent such actions allow or are likely to allow (a) through (d) above, but not to include normal replacement of lighting or marking to conform to FAA requirements.*

7.104 Applicability

These Regulations shall apply only to the site selection and expansion of airports as defined at Section 7.102.

Article 2 Permit Application and Procedure

7.201 Application Submission Requirements

In addition to the materials listed at Section 2.303, applications for a permit for site selection or expansion of an airport shall be accompanied by the following information, maps, requirements and data in the number required by the Director:

- (1) A plan (a/k/a airport layout or master plan) and related documents and studies, locating the proposed airport or expansion with respect to the following:
 - (a) The boundaries of the Airport Influence Area and of airport zones therein;
 - (b) The location of existing or proposed airport facilities, including towers, lights, terminals, hangars, aprons, parking areas, taxiways, and runways.
 - (c) The location and nature of existing or approved developments and land uses within the Airport Influence Area;
 - (d) The elevation or contours of the ground and elevation of existing structures within the Airport Influence Area, *as shown on current USGS contour maps at selected points to reasonably identify these features.*
- (2) Flight pattern map and description of expected impact of the new or expanded airport on existing or approved development within the Airport Influence Area.
- (3) Description of potential public safety and property issues related to the airport and possible plane crashes.
- (4) Description of how the airport or airport expansion will affect existing communities, the environment and existing community services.

- (5) Description of how the airport or airport expansion will affect economic and transportation needs of the County and the area.
- (6) Description and copies of applicable FAA permits and approvals.
- (7) Description of how the proposed airport or airport expansion relates to existing airports.
- (8) Adequate proof, which may include legally sufficient executed avigation easements and/or disclosures, that the proposed airport or airport expansion will not result in a taking of private property rights, including invasion of airspace or air rights by glide paths of aircraft for take-off and landings.

7.202 Review Criteria

A permit for the conduct of site selection or expansion of an airport shall be approved if the Permit Authority, or in the case of an Administratively Approved Permit, the Director, the application complies with the following criteria and the relevant criteria at Section 2.405. If the Permit Authority finds that the application does not comply, the application shall be denied or may be approved with conditions:

- (1) Site selection and expansion of airports shall be administered to encourage land use patterns that will separate uncontrollable noise sources from residential and other noise-sensitive areas;
- (2) Site selection and expansion of airports shall be administered to avoid danger to public safety and health or to property due to potential aircraft crashes;
- (3) Airports shall be located or expanded in a manner that will minimize disruption to the environment, minimize the impact on existing community service, and complement the economic and transportation needs of the State and the County;
- (4) There is sufficient existing and projected need to warrant and support the airport or airport expansion;
- (5) The nature and location of the airport site or expansion complies with all applicable provisions of the State Aviation Systems Plan, and other applicable municipal, regional, state and national plans;
- (6) The nature and location of the airport site or expansion is compatible with the existing and reasonably foreseeable economic and transportation needs of the County and of the area immediately servicing the airport, including mass transit facilities, trails, and stormwater infrastructure;
- (7) The nature and location of the airport site or expansion does not unduly or unreasonably impact existing community services;

- (8) The airport site or expansion is not in an area with meteorological and climatological conditions which would unreasonably interfere with or obstruct normal airport operations and maintenance;
- (9) The airport site or expansion is not in an area with unmovable obstructions which might interfere with any airport approach or clear zone, or assurances have otherwise been received that all removable obstructions will be eliminated from all airport approach or clear zones;
- (10) The benefits of the airport location or expansion outweigh the loss of any natural resources or agricultural lands rendered unavailable as a result of the proposed airport location or expansion, including development of the area around the airport;
- (11) Adequate electric, gas, telephone, water, sewage, and other utilities exist or can be developed to service the airport site or expansion;
- (12) Immediate and future noise levels in communities within the Airport Influence Area to be caused by the airport location or expansion and any anticipated future expansion will not violate any applicable local, state, or federal laws or regulations;
- (13) Adequate mitigation measures have been proposed, including financial security to guarantee the same, to mitigate the identified adverse impacts of the airport site or expansion;
- (14) The airport site or expansion will not place an undue burden on existing land uses in the area or on the communities of the region;
- (15) The airport site or expansion is designated to minimize the impacts of airport noise on nearby developments;
- (16) The airport site or expansion will contribute to the orderly development of the airport area and the region;
- (17) The airport site or expansion, and uses and activities associated with or generated by it, will not result in a taking of private property rights, including invasion of airspace or air rights by glide paths of aircraft for take-off and landings.

CHAPTER 7

SITE SELECTION AND EXPANSION OF AIRPORTS

Article 1 General Provisions

- 7.101 Designation of Activity of State Interest
- 7.102 Purpose and Intent
- 7.103 Definitions
- 7.104 Applicability

Article 2 Permit Application and Procedure

- 7.201 Application Submission Requirements
- 7.202 Review Criteria

Article 1 General Provisions

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- (4) *Airport* means any municipal or county airport or airport under the jurisdiction of an airport authority. *Airport* includes an airport expansion and the associated

Airport Influence Area. Airport also includes general aviation or reliever airports, and any area of land or water which is used or intended for the landing and takeoff of aircraft, any appurtenant areas which are used or intended for airport buildings or other airport facilities or rights-of-way, and all airport buildings and facilities, all with respect to its use for airport purposes. Airport does not include a personal airstrip as defined and regulated by Chapter 1 (definitions) and Table 5-1 (principal uses) of the El Paso County Land Development Code.

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- (4) Description of how the airport or airport expansion will affect existing communities, the environment and existing community services.

Deleted: <#>The location and elevation of existing and proposed streets, highways, transit routes, and fixed transit lines and trails within or directly adjacent to the Airport Influence Area.¶

- (5) Description of how the airport or airport expansion will affect economic and transportation needs of the County and the area.
- (6) Description and copies of applicable FAA permits and approvals.
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- (4) There is sufficient existing and projected need to warrant and support the airport or airport expansion;
- (5) The nature and location of the airport site or expansion complies with all applicable provisions of the State Aviation Systems Plan, and other applicable municipal, regional, state and national plans;
- (6) The nature and location of the airport site or expansion is compatible with the existing and reasonably foreseeable economic and transportation needs of the County and of the area immediately servicing the airport, including mass transit facilities, trails, and stormwater infrastructure;
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- (17) The airport site or expansion, and uses and activities associated with or generated by it, will not result in a taking of private property rights, including invasion of airspace or air rights by glide paths of aircraft for take-off and landings.



WORK SESSION ITEM

COUNCIL MEETING DATE: January 13, 2014

TO: President and Members of City Council

FROM: Eileen Lynch Gonzalez, City Council Administrator

SUBJECT: Agenda Planner Review

The following agenda items have been proposed for the Work Session and Regular Meetings on January 27 and 28 and February 10 and 11, 2014.

Work Session Meeting – January 27

Staff and Appointee Reports

1. Memorial Health System Enterprise Update – Kara Skinner, Chief Financial Officer

Items for Introduction

1. An Ordinance Amending Ordinance No. 03-204 Pertaining to the Appointment of Utilities Policy Advisory Committee Members – Sherri Newell Wilkinson, Chief Strategy and External Affairs Officer, Colorado Springs Utilities
2. A Resolution Granting Permission to Close Consensual Transactions for the Acquisition of Property for the Southern Delivery System Project – John Fredell, General Manager, Southern Delivery System, Colorado Springs Utilities
3. A Request by the Colorado Springs Urban Renewal Authority for a Major Amendment to the North Nevada Avenue Urban Renewal Plan – Peter Wysocki, Planning and Development Director

Items Under Study

1. Discussion of Scope of First Phase of Comprehensive Plan Update – Peter Wysocki, Planning & Development Director; Carl Schueler, Senior Planner

Regular Meeting – January 28

Consent Calendar

1. Request by NES, Inc. on behalf of Chuck Murphy for consideration of development applications relating to Josephs Restaurant property at the southeast corner of 8th Street and Yucca Drive – Peter Wysocki, Planning & Development Director & Mike Schultz, Planner II

2. Request by Boulder Heights, LLC for consideration of development applications relating to a property located west of the intersection of Yvette Heights and S. 8th Street – Peter Wysocki, Planning and Development Director; Larry Larsen, Senior Planner
3. Amendments to Sections 103, 105, and 705 of Chapter 7 of the Code of the City of Colorado Springs, 2001, as amended, pertaining to requirements for human service establishments – Peter Wysocki, Planning and Development Director; Larry Larsen, Senior Planner

Utilities Business

1. A Resolution Appointing Members of the Board of Directors of Public Authority for Colorado Energy (“PACE”) for Staggered Terms Effective December 15, 2013 – Bill Cherrier, Chief Planning and Financial Officer, Colorado Springs Utilities

Unfinished Business

1. An Ordinance Amending Section 201 of Part 2 of Article 2 of Chapter 1 of the Code of the City of Colorado Springs 2001, As Amended, Pertaining to the Confirmation Process for Mayoral Appointees – Councilmembers Knight & Pico
2. An Ordinance Amending Section 303 of Part 3 of Article 2, Chapter 1 of the Code of the City of Colorado Springs 2001, As Amended, Pertaining to the Confirmation Process for Mayoral Appointees. – Councilmembers Knight & Pico
3. A Resolution Adopting an Amendment to the "City of Colorado Springs Rules and Procedures of City Council," Relating to General Procedures for Confirmation of Mayoral Appointees– Councilmembers Knight & Pico

New Business

1. CDOT Intergovernmental Agreements for CDOT-funded Projects – Legislative Counsel Massey, Public Works Staff
2. A Resolution Reinstating Limitations On Judgments And Rescinding Portions Of Resolution Nos. 82-89 And 6-99 Pertaining To Damage Limitations Set Forth In The Colorado Governmental Immunity Act, C.R.S. § 24-10-101, *Et Seq.* – Kara Skinner, Chief Financial Officer, Michael Sullivan, Human Resources Director
3. Request by the Colorado Spring Urban Renewal Authority for a major amendment to the North Nevada Avenue Urban Renewal Plan – Peter Wysocki, Planning Director
4. Amendments to Sections 103, 105 and 705 of Chapter 7 of the Code of the City of Colorado Springs, 2001, as amended, pertaining to requirements for human service establishments– Peter Wysocki, Planning & Development Director, Larry Larsen, Senior Planner

5. An Ordinance Amending Ordinance No. 03-204 Pertaining to the Appointment of Utilities Policy Advisory Committee Members – Sherri Newell Wilkinson, Chief Strategy and External Affairs Officer, Colorado Springs Utilities
6. Ordinance and Resolution Regarding Prohibition of Possession of Marijuana at Colorado Springs Airport – Dan Gallagher, Interim Aviation Director/City Attorney’s Office

Public Hearing

1. Public hearing on appeal by Flying Horse residents regarding the Planning Commission action of December 19, 2013 approving certain development applications relating to Flying Horse Convenience Development Plan – Peter Wysocki, Planning & Development Director; Meggan Herington, Planner II

Work Session Meeting – February 10

Presentations for General Information

1. Memorial Hospital Update Relating to Lease and Integration Affiliation Agreement Reporting Requirements – Mike Scialdone, Memorial Hospital CEO

Items for Introduction

1. Proposed Ordinance Relating to Licenses/Permits for private companies to provide funeral escorts within the City – Councilmember Jan Martin

Regular Meeting – February 11

New Business

1. A Request by the Colorado Springs Urban Renewal Authority for a Major Amendment to the North Nevada Avenue Urban Renewal Plan – Peter Wysocki, Planning and Development Director



WORK SESSION AGENDA ITEM

COUNCIL MEETING DATE: January 13, 2014

TO: President and Members of City Council

CC: Mayor Steve Bach

VIA: Laura Neumann, Chief of Staff/Chief Administrative Officer

FROM: Kara Skinner, Chief Financial Officer

SUBJECT: **Memorial Health System Enterprise Financial Report**

On October 1, 2012, the City of Colorado Springs executed the Memorial Health System (MHS) Operating Lease Agreement and the Integration and Affiliation Agreement by and among the City of Colorado Springs, University of Colorado Health, Poudre Valley Health Care, Inc., and UCH-MHS. The MHS Enterprise endures and is primarily a leasing enterprise.

On January 8, 2013, City Council approved the MHS appropriation ordinance and requested monthly reports of revenue and expenditures. Below is the cash flow report as requested:

Beginning November 1, 2013 balance		\$ 26,709,898
Revenue:		
November and December lease payments	935,352	
Class action related to securities	8,474	
Total Revenue		943,826
Expenses:		
Run-out workers' comp, liability claims & insurance costs	(61,871)	
Medical Network claims refunds net of fees	50,610	
RBA payments	(69,965)	
Foundation start-up costs	(2,074)	
City administration costs	(533)	
Legal fees	(574,114)	
Bank fees	(1,073)	
Wire to UCH for repayment of post-closing adjustment	(5,000,000)	
Total Expenses		(5,659,020)
Ending November 30, 2013 balance		\$ 21,994,704



Work Session Agenda Item

Council Meeting Date: January 13, 2014

To: President and Members of City Council

cc: Mayor Steve Bach

Via: Laura Neumann, Chief of Staff

From: Dave Lethbridge, Interim Public Works Director

Subject Title: Cimarron/I-25 Interchange Design-Build Project, Staff Report

Summary: This will be a joint presentation by City and the Colorado Department of Transportation (CDOT) staff to provide Council with background information and a project update for the Cimarron/I-25 Interchange Project.

Previous Council Action: None

Background: The Interstate 25 / Cimarron Expressway interchange will be reconstructed by CDOT using a design/build project delivery method. This project has been envisioned and prioritized for many years and will cost about \$95M. Project goals and project timelines have been adopted. The executive team, project management team, and other technical, consultant, and stakeholder teams are formed and have begun their work.

Financial Implications: None

Board/Commission Recommendation: NA, staff presentation only, no action needed.

Stakeholder Process: This presentation is part of the stakeholder process for the Cimarron/I-25 Interchange project by informing elected officials about the process and providing a progress report.

Alternatives: NA

Recommendation: NA

c: Kathleen Krager, Transportation Manager
Bob Cope, Economic Vitality
Dave Watt, CDOT Resident Engineer
Lisa Bachman, Bachman Public Relations

Attachments: CDOT PowerPoint Presentation

I-25/Cimarron Interchange Design-Build Project



**COLORADO SPRINGS CITY COUNCIL
BRIEFING**

JANUARY 13, 2104

DAVE WATT-CDOT REGION 2

Agenda



- **Funding breakdown**
- **Project Overview**
- **Stakeholder Process**
- **Project Goals**
- **General Schedule**
- **Next Steps**

Current Funding

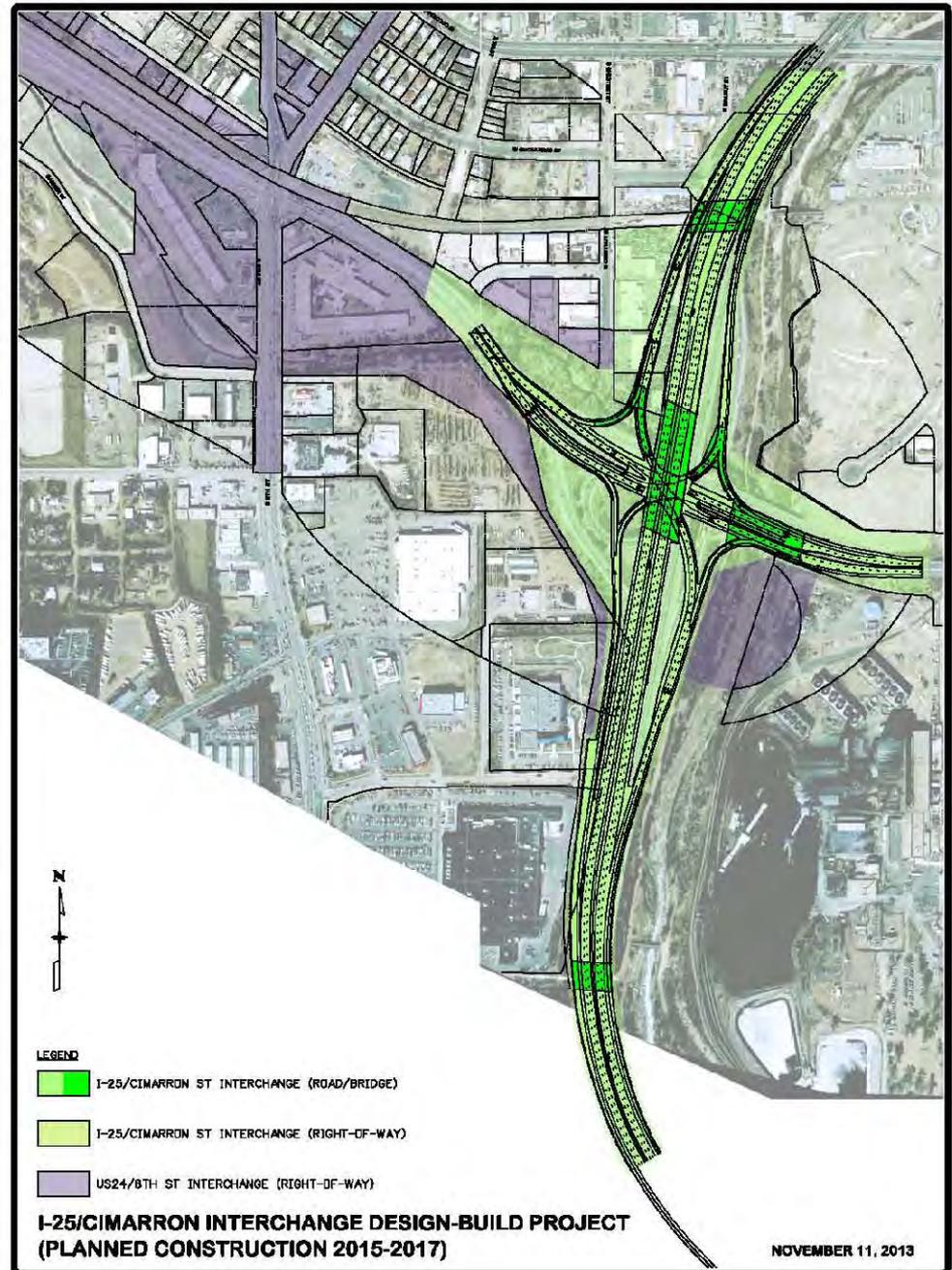


- **Total Project Funding-\$95 Million**
 - **Local Match**
 - ✦ **\$6 Million**
 - **RAMP Funds**
 - ✦ **\$24 Million**
 - **Accelerated STIP Funds**
 - ✦ **\$46.7 Million**
 - **RAMP Asset Funds**
 - ✦ **\$18.3 Million**

Project Overview

Anticipated Basic Configuration

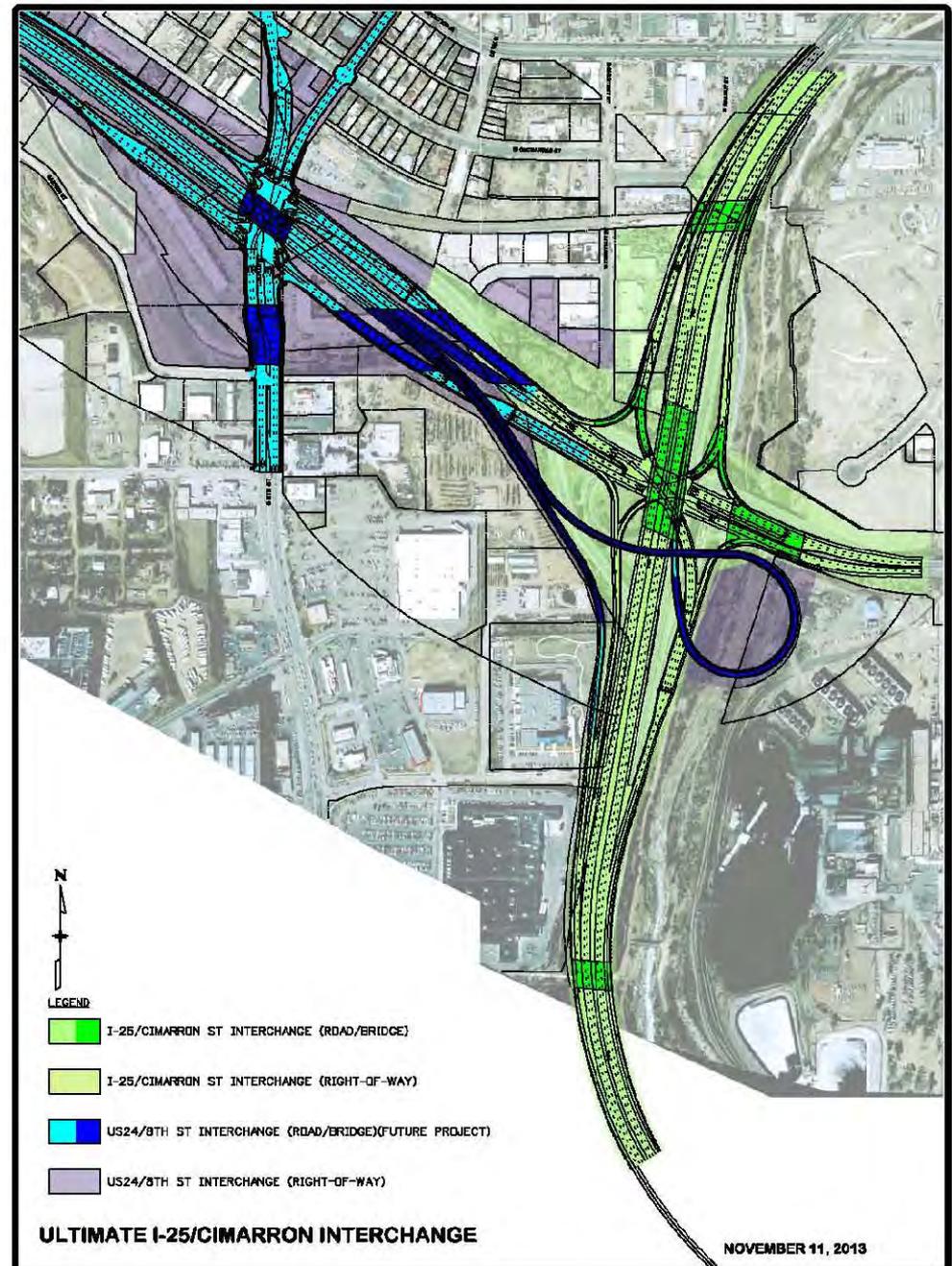
- Improve Safety
- Improve Capacity
- Provide 6-lanes on I-25
- Improve Interchange operations



US 24 Compatibility

Future Compatibility

- Accommodate Future Ramps
- Accommodate Future US 24 Expansion



Stakeholder Process

I-25/CIMARRON INTERCHANGE DESIGN-BUILD PROJECT - PROJECT ORGANIZATION

PROJECT GOALS

1. Maximize overall safety, capacity and operation of the interchange and the surrounding transportation network within the Project budget
2. Complete Project construction to be fully operational before July 1, 2017
3. Minimize impacts and inconvenience to the community, motorists, businesses, downtown and the public during construction
4. Achieve an aesthetically-pleasing design compatible with current and future amenities and enhancements in and around the interchange

WORKING TEAM STAKEHOLDERS (WTS)

CDOT Resident Engineer - Dave Watt	Old Colorado City Associates (OCCA) -
CDOT Project Manager - Lesley Mace	CDOT Commissioner - Les Gruen
Downtown Partnership, Mayor's Downtown Leadership Team - Susan Edmondson	Pikes Peak Area Council of Government/ PPRTA - Rob MacDonald
City of CS City Council - Keith King	El Paso County - Andre Brackin
City Economic Vitality - Bob Cope	City of CS Traffic - Tim Roberts
Southwest Downtown URA - Jim Rees	City of CS Trails, Open Space & Parks (TOPS) - Chris Lieber
Westside Business Interests - Gary Bradley	City of CS Parks, Recreation & Cultural Services - Karen Palus
Fountain Creek Watershed, Flood Control & Greenway District - Larry Small	Council of Neighbors & Organizations - Dave Munger
Greenway Fund - David Lord	CDOT Environmental - Lisa Streisfeld
Organization of Westside Neighbors (OWN) -	Corridor Manager - Dave Poling
	Public Involvement - Lisa Bachman

First Meeting January 2014

EXECUTIVE OVERSIGHT COMMITTEE (EOC)

Tom Wrona CDOT RTD	Randy Jensen FHWA	Sallie Clark El Paso County
Richard Zamora CDOT Headquarters	Dave Lethbridge City of Colorado Springs	

Meets Quarterly

PROJECT MANAGEMENT TEAM (PMT)

Doug Lollar CDOT Program Engineer	Randy Jensen/Dahir Egal FHWA	Scott Asher Design Development Manager (Wilson)
Dave Watt CDOT Resident Engineer	Kathleen Krager City of Colorado Springs	Lisa Streisfeld CDOT Environmental
Lesley Mace CDOT Project Manager	Andre Brackin El Paso County	Lisa Bachman Public Involvement
Nabil Haddad CDOT Innovative Contracting	Mark Scholfield Consultant PM (Wilson)	Kevin Shanks Aesthetics/Landscaping
Rob MacDonald PPACG	Dave Poling Corridor Manager (PB)	

Meets Monthly

LEADERSHIP TEAM

Dave Watt CDOT Resident Engineer	Dave Poling Corridor Manager (PB)
Lesley Mace CDOT Project Manager	Scott Asher Design Development Manager (Wilson)
Mark Scholfield Consultant Project Manager (Wilson)	Lisa Bachman Public Involvement

Meets Weekly

TECHNICAL TEAMS

Meets as Necessary

General Design Development
ROW, Survey, Structures, Geotechnical
Lesley Mace - CDOT Project Manager
Scott Asher - Design Development Manager

Environmental Compliance
Lisa Streisfeld - CDOT Environmental
Larry Sly - Consultant Lead

Utilities Coordination
Andy Garton - Consultant Lead

Drainage and Floodplains
Vance Fossinger - Consultant Lead

Traffic & MOT
Dave Krauth - Consultant Lead
Kathleen Krager - C.S. Traffic

Aesthetics/Landscaping/Trails
Kevin Shanks - Consultant Lead

The above list of Technical Teams is not complete.
Others to be added as needed.

Project Goals



- 1. Maximize overall safety, capacity and operation of the interchange and the surrounding transportation network within the Project budget.**
- 2. Complete project construction to be fully operational before July 1, 2017.**
- 3. Minimize impacts and inconvenience to the community, motorists, businesses, downtown and the public during construction.**
- 4. Achieve an aesthetically-pleasing design compatible with current and future amenities and enhancements in and around the interchange.**

General Schedule



- **Begin Preparing D/B Documents** **Fall 2013**
- **Begin Procurement Process** **Winter 2014**
- **Issue Request for Qualification** **Spring 2014**
- **Issue Request for Proposal** **Summer 2014**
- **Contractor Selection** **Winter 2014/15**
- **Construction Completion** **End of 2017**

Next Steps



- **Executive Oversight Committee Meeting**
- **Begin Technical Team Meetings**
- **Begin Developing Project Technical Details**



Questions?



Work Session Agenda Item

Council Meeting Date: January 13, 2014

To: President and Members of City Council

cc: Mayor Steve Bach

From: Eileen Lynch Gonzalez, Council Administrator

Subject Title: Pikes Peak Regional Stormwater Task Force – Results of 2013 Public Polling

Summary: In November 2013, the Pikes Peak Regional Stormwater Task Force polled 400 Pikes Peak region residents and voters so that elected officials and other task force members could have the best possible information about local citizens' stormwater concerns and priorities. Program features and funding mechanisms were tested separately. The poll is part of a comprehensive research strategy, which includes town hall meetings in October and November, as well as economic, engineering and legal research currently underway.

Background: A strong majority of citizens believe flood control and run-off management are very important in the Pikes Peak region:

- 95 percent say flood control is important; 2/3 say it's very important
- 95 percent say stormwater has had a serious impact on the community
- 59 percent say the system is in poor or not so good condition

Voters are not fixed on any idea or solution, though a few have heard ideas that they generally like:

- 90 percent are in favor of continuous funding for system improvements
- 81 percent prefer a dedicated funding stream
- 73 percent are in favor of a regional approach
- 78 percent are in favor of a specific project list or master plan
- 78 percent think a solution should receive voter approval

Other notable findings:

- Respondents do not show a preference for any particular entity managing a drainage and flood control program
- A fee based on impermeable surface (for both taxable and tax-exempt organizations) has more support than tax-based approaches. A bonding approach might be more popular, but also faces challenges related to debt and continuity.
- Though 81 percent favor a dedicated funding stream, none of the funding mechanisms tested receives 60 percent support or more, a threshold considered statistically significant.

Attachments:

- PowerPoint Presentation



El Paso County Flood Control Survey

n=402 Likely Voters
MoE=+4.9%
November 17-18, 2013

Flooding in El Paso County

• Pg 3

Awareness of Proposed Solutions

• Pg 6

Specific Options

• Pg 9

Communicators and Branding

• Pg 18

Summary and Recommendations

• Pg 21

Research Design and Demographics

• Pg 23

Flooding in El Paso County

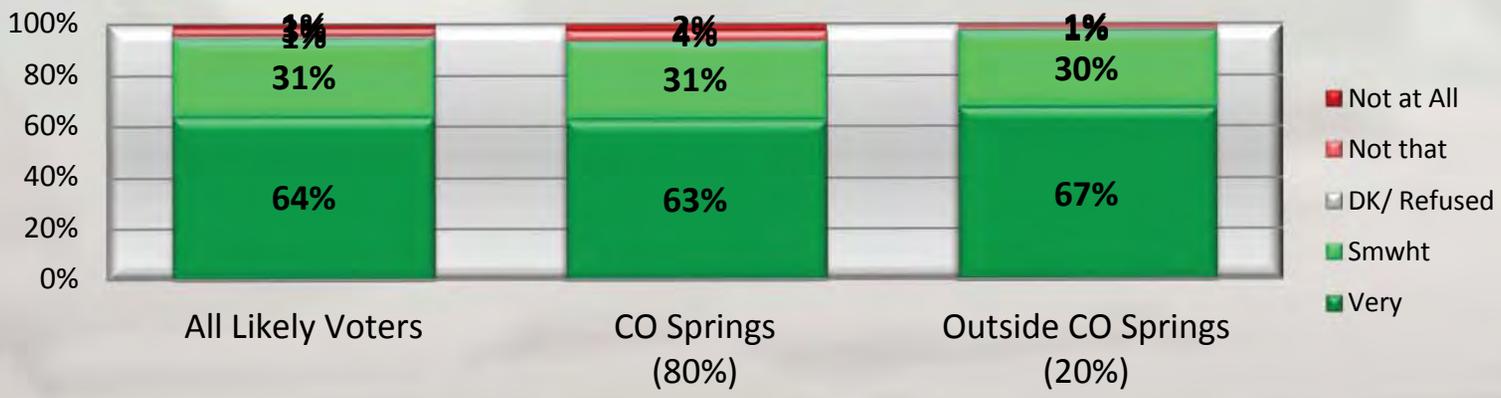


A strong majority of likely voters believe flood control and run-off management are very important in the Pikes Peak region.

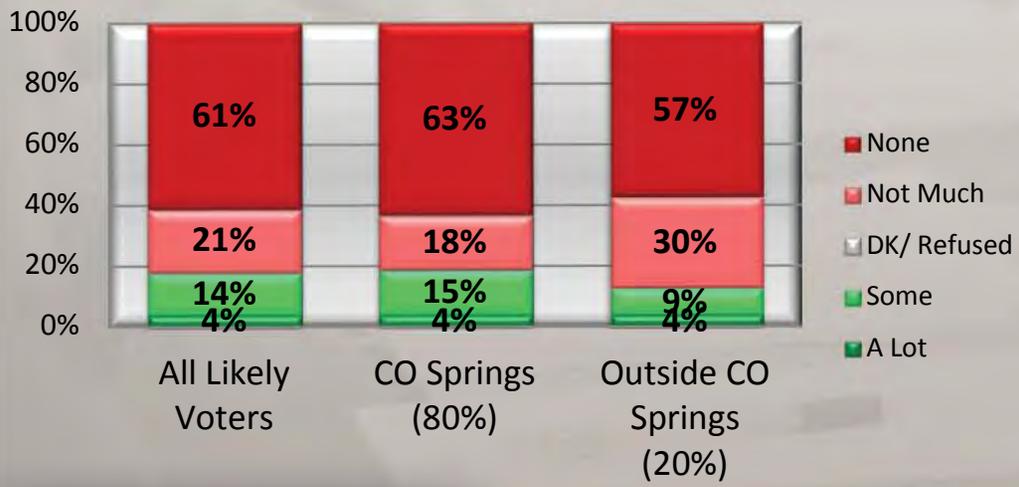
- 3. Importance of Flood Control and Storm Runoff Management in Pikes Peak Region
- 4. Personal Impact
- 5. Impact of Flooding to Region

Impact of Flooding

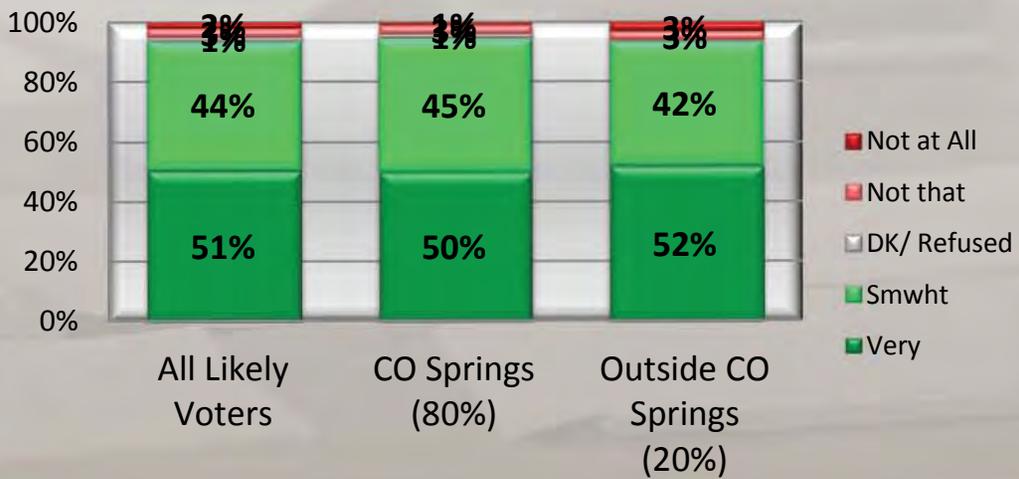
Importance of Flood Control



Personally Impacted



Regional Impact



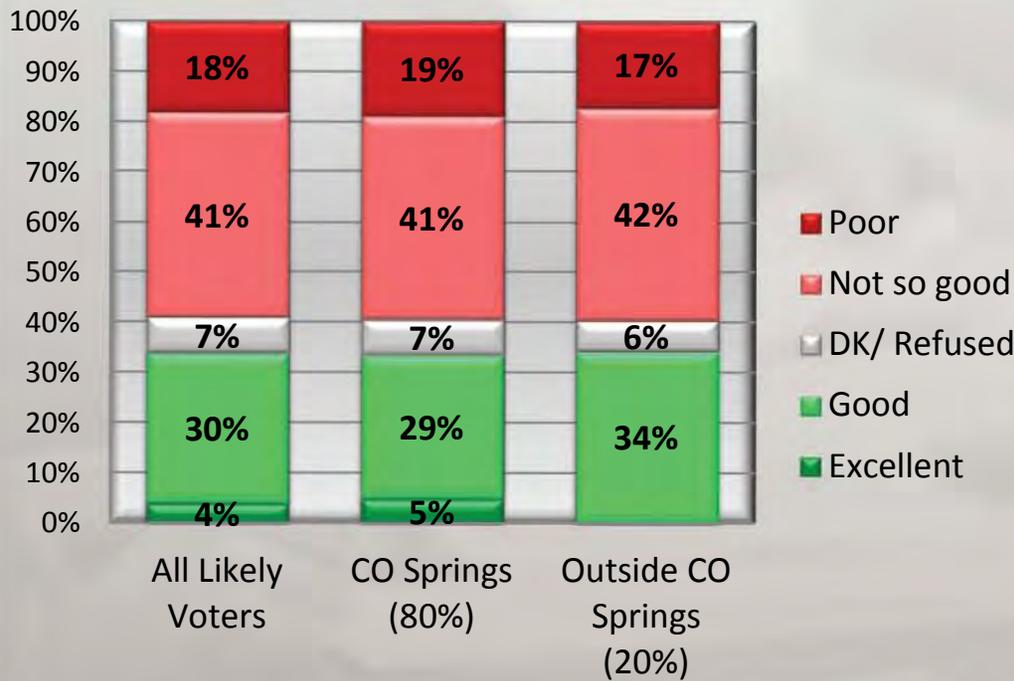


There is near-universal agreement that a continuous funding source is important to improve the flood control and run-off control systems, and a majority of likely voters – both inside and outside the city of Colorado Springs – give the system a low rating.

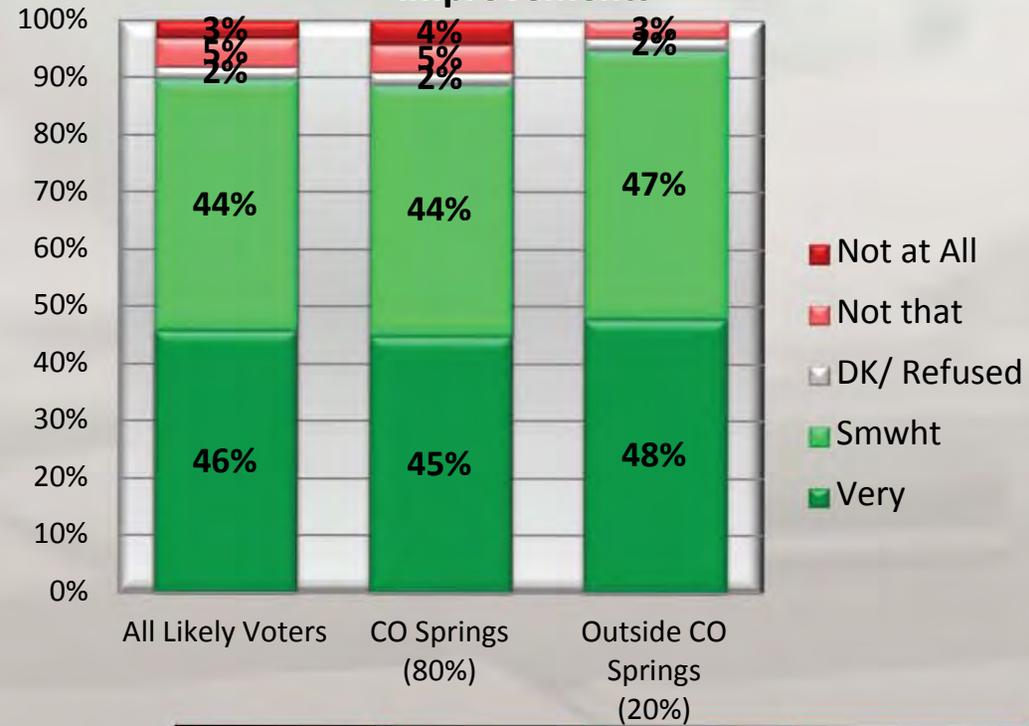
6. Condition of Flood Control and Run-Off Control Systems
 7. Importance of Continuous Funding Source

Condition and Funding of Flood Control Systems

Condition Rating



Importance of Continuous Funding Source for Improvements



	Overall	CO Springs	Outside
Good/ Excellent	34%	34%	34%
Not so Good/ Poor	59%	60%	59%

	Overall	CO Springs	Outside
Important	90%	89%	95%
Not Important	8%	9%	3%

Awareness of Proposed Solutions

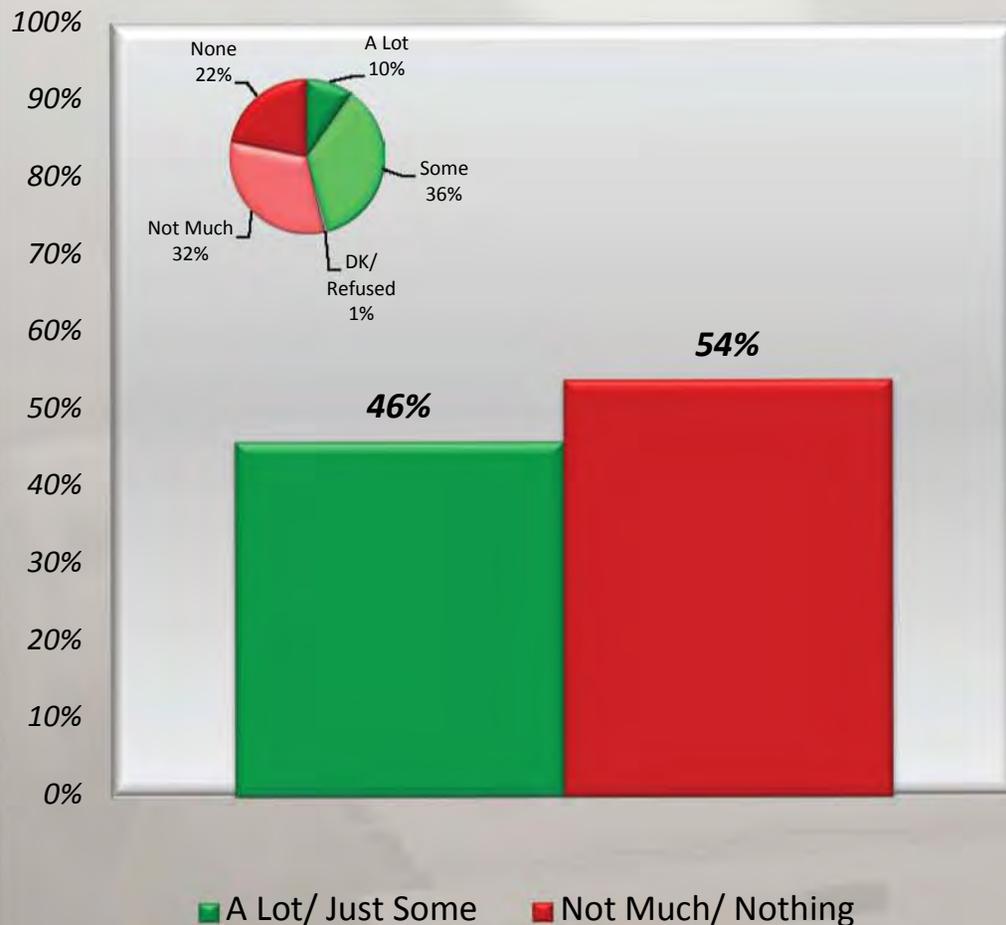


Roughly half of likely voters have heard at least some information a proposed solution.

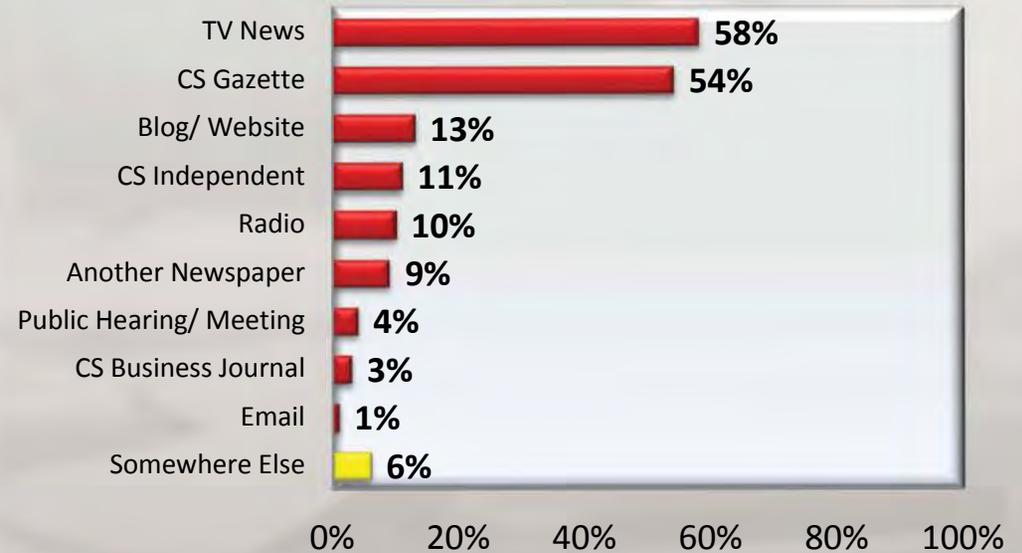
- 8. Information Flow Volume
- 9. Information Flow Source
- 10. Information Flow Recall

Information Flow: Recent Proposals to Address Flood Control and Run-Off Control Systems

Volume



Source



Recall

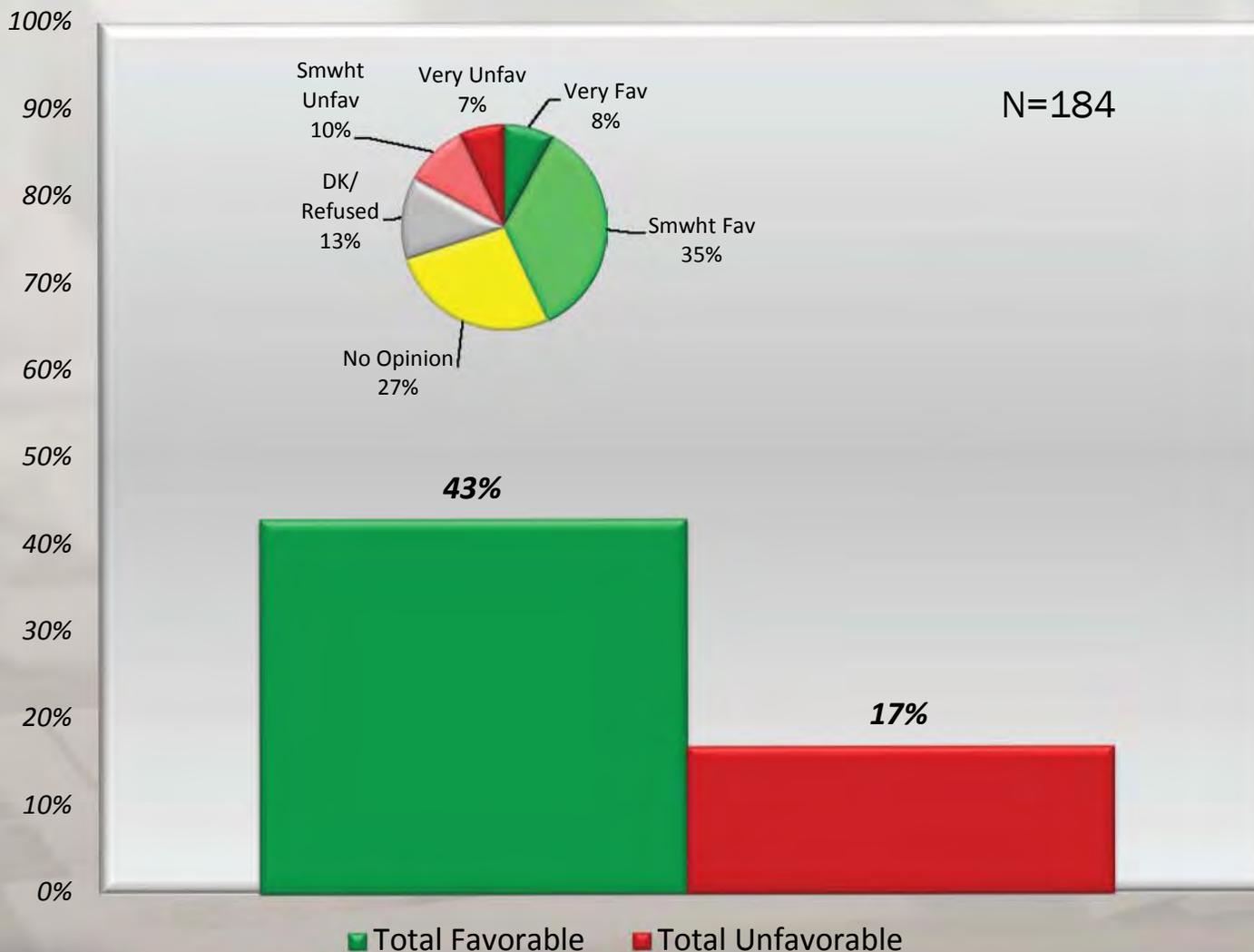
- No specifics – general awareness
- Specific areas – Williams' Canyon, Mountain Creek, Manitou Springs, Highway 24
- New tax/ tax increase
- Water management plan, control attempts
- City/ Mayor and County working on ideas – competing?



Among those who have heard something about proposed solutions, opinions are generally favorable.

11. Opinion of Recent Proposals

Opinion of Recent Proposals



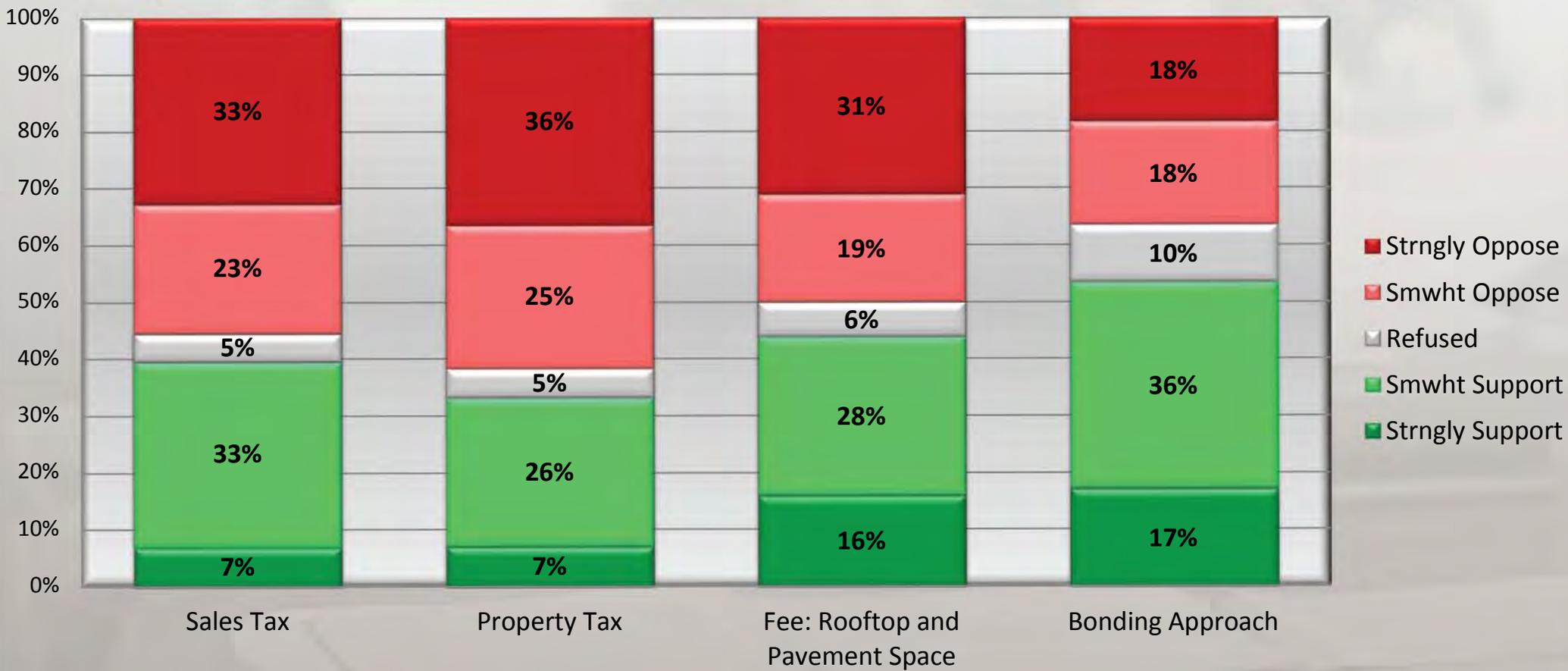
Specific Options



A tax funding solutions is less popular than is a fee based on impermeable surface area. A bonding approach is slightly more popular than direct payment.

12-14. Specific Options to Address Flood Control and Run-Off Management Needs

Funding Source Options



	Sales Tax	Property Tax	Rooftop/ Pavement Fee	Bonding Approach
Support	39%	34%	44%	53%
Oppose	55%	61%	50%	36%

Possible Features

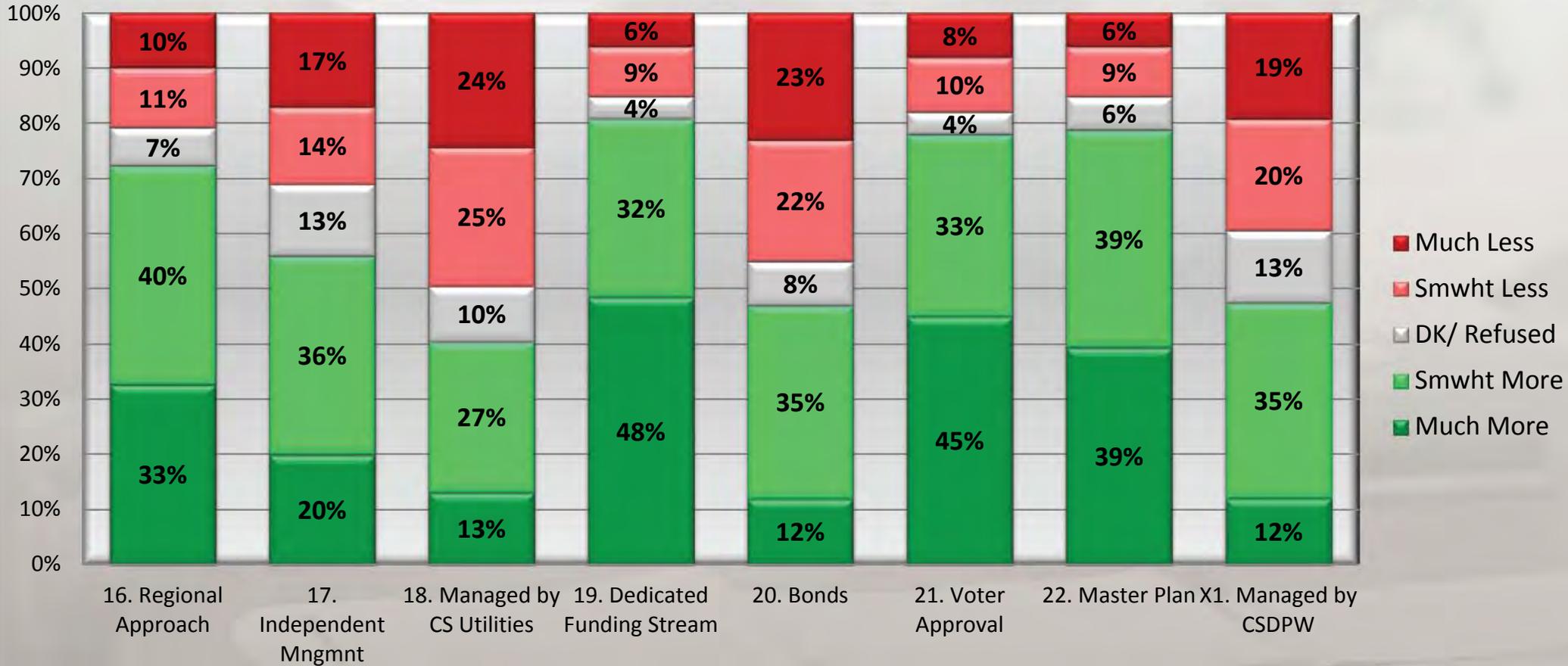
16. The program is a regional approach that includes all of El Paso County.
17. The funds are managed by an independent Authority similar to the Pikes Peak Rural Transit Authority, the PPRTA.
18. The program is managed by Colorado Springs Utilities.
19. The money from this tax or fee is a dedicated funding stream that cannot be used for any other purposes.
20. Bonds are issued to make immediate improvements and then repaid with funds from a tax or fee.
21. The funds are used only for a specific list of projects which voters will approve.
22. There will be a master plan that will help guide selection of projects that meet the most important needs in the area.
- X1. The program is managed by the City of Colorado Springs Department of Public Works.



The idea of a dedicated funding stream, requiring voter approval of a specific list of projects or of a master plan create the most support overall. A regional approach is also a desirable feature.

16-x1. Possible Features of Program to Address Critical Flood Control and Run-Off Management

Possible Features: All Likely Voters



	16. Regional Approach	17. Independent Mngmnt	18. Managed by CS Utilities	19. Dedicated Funding Stream	20. Bonds	21. Voter Approval	22. Master Plan	X1. Managed by CSDPW
More Likely	73%	56%	40%	81%	48%	78%	78%	47%
Less Likely	20%	32%	50%	15%	45%	18%	16%	40%

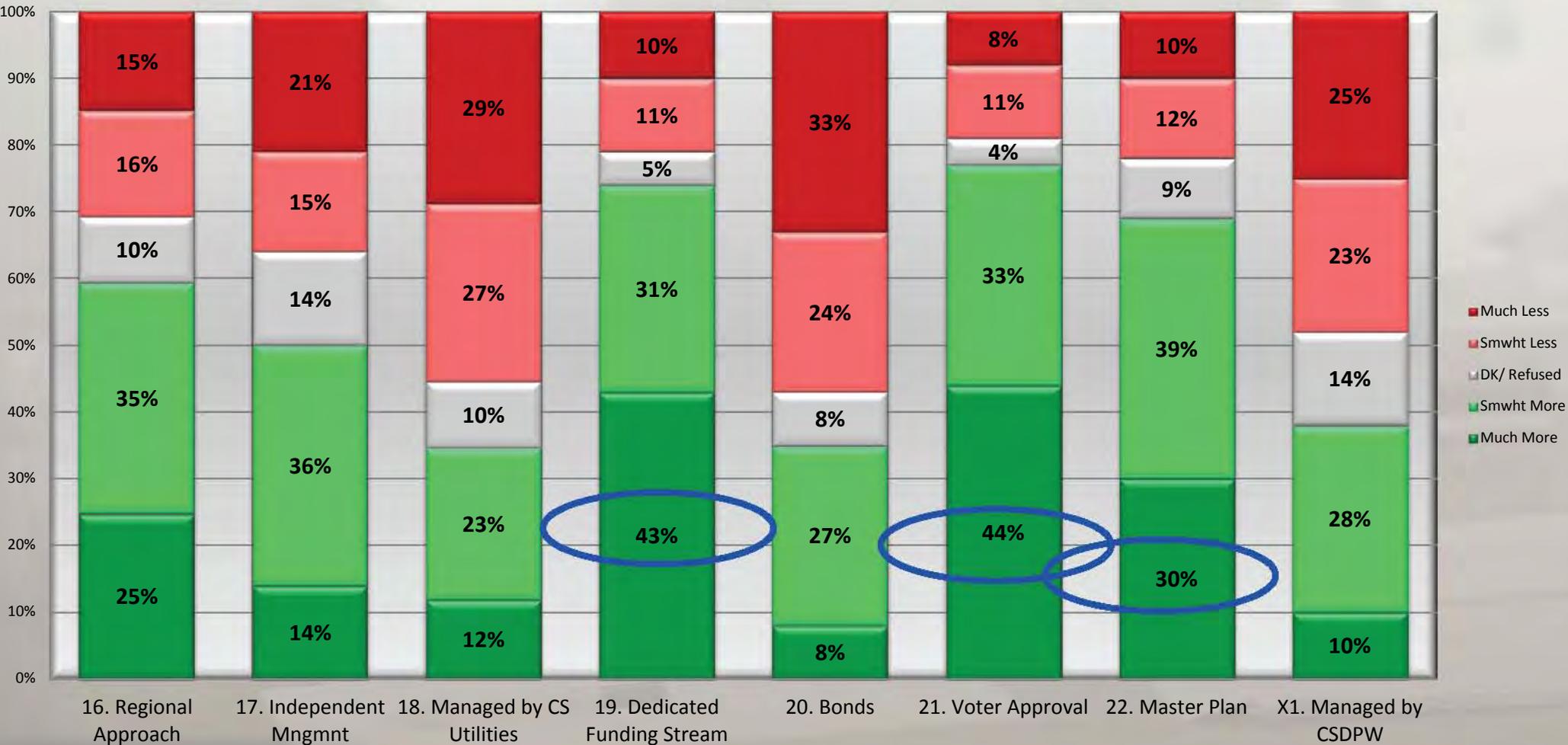


Among those who are either undecided or opposed to the rooftop and pavement fee proposal, the additional aspects that cause the largest number to be much more likely to support the proposal are the dedicated funding stream and requiring voter approval.

16-x1. Building the Strongest Proposal

Building the Strongest Proposal

Undecided or Opposed to Rooftop and Pavement Area Fee



WPA re-contacted 83 out of the 215 likely voters who supported the most popular funding proposal to test the effect of the absence of several key elements. These interviews were conducted on November 24-26, 2013.

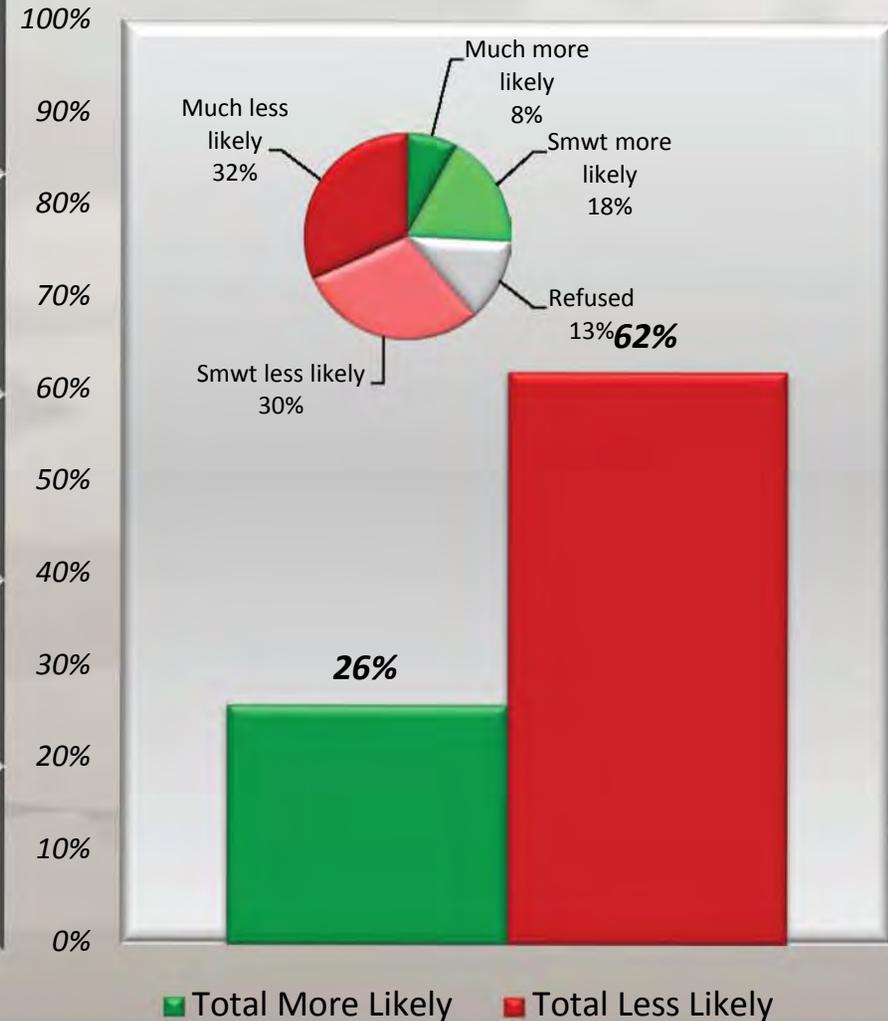


A plan that adds to local government debt, does not provide a continuous source of funding, is not dedicated, and does not take a regional approach would raise opposition from substantial numbers of voters.

Details of the plan

n=83

Likelihood to Vote for Plan if All Details Are True



Details of the Plan	Much Less Likely	Total Less Likely
The plan would add millions to the debt owed by local governments.	54%	80%
The plan does not provide a continuous source of funds for ongoing maintenance of the flood control and run-off control systems.	47%	76%
The plan does not provide a dedicated funding stream for flood control and run-off control systems.	39%	78%
The plan will not be a regional approach to the problem of flooding and storm water run-off.	39%	70%
The plan would end after five years and only addresses 60% highest priority projects in the area.	24%	50%

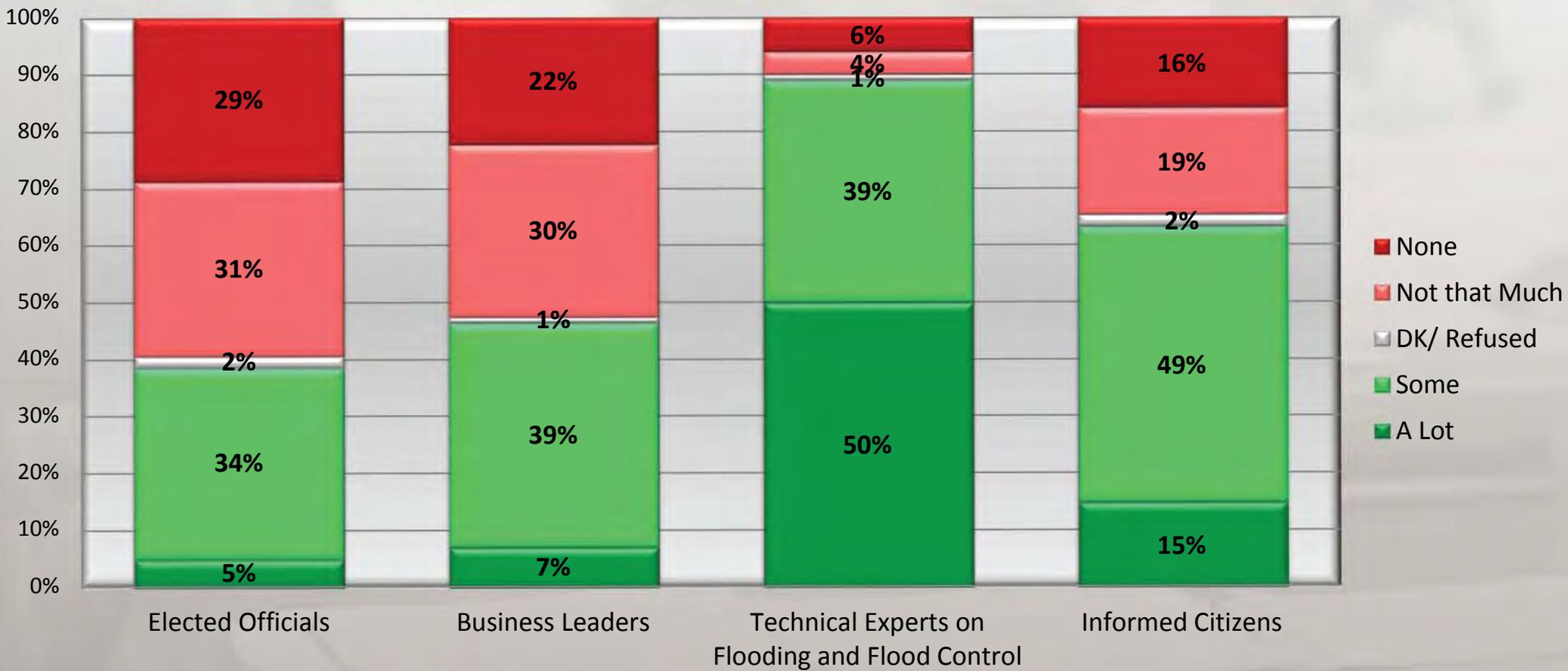
Communicators and Branding



Voters say that technical experts are, by far, the most influential voices when it comes to flood control and run-off management.

23-26. Influential Spokespeople

Influential Spokespeople



	Elected Officials	Business Leaders	Technical Experts	Informed Citizens
Influential	39%	47%	89%	64%
Not Influential	60%	52%	10%	34%

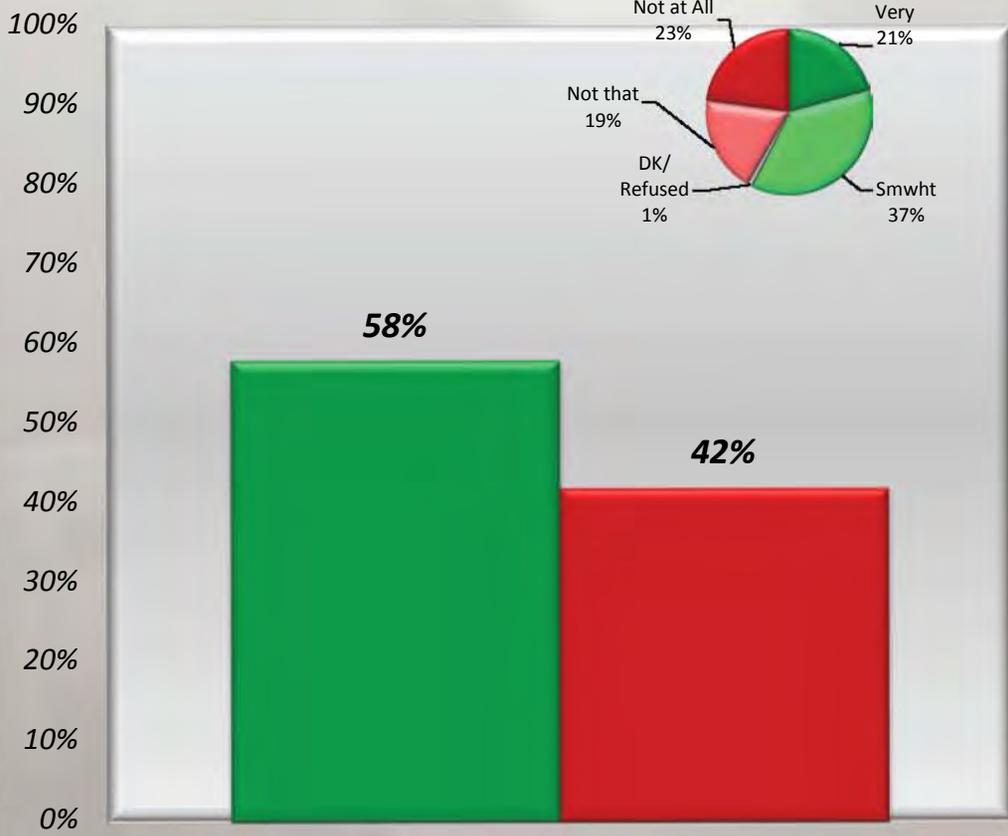


Nearly half of the likely voters who are familiar with the Stormwater Enterprise program have an unfavorable opinion of it. While these numbers are less bad than we hypothesized, they do indicate that “Stormwater” is a tarnished brand.

27. Familiarity with Stormwater Enterprise
 28. Opinion of Stormwater Enterprise

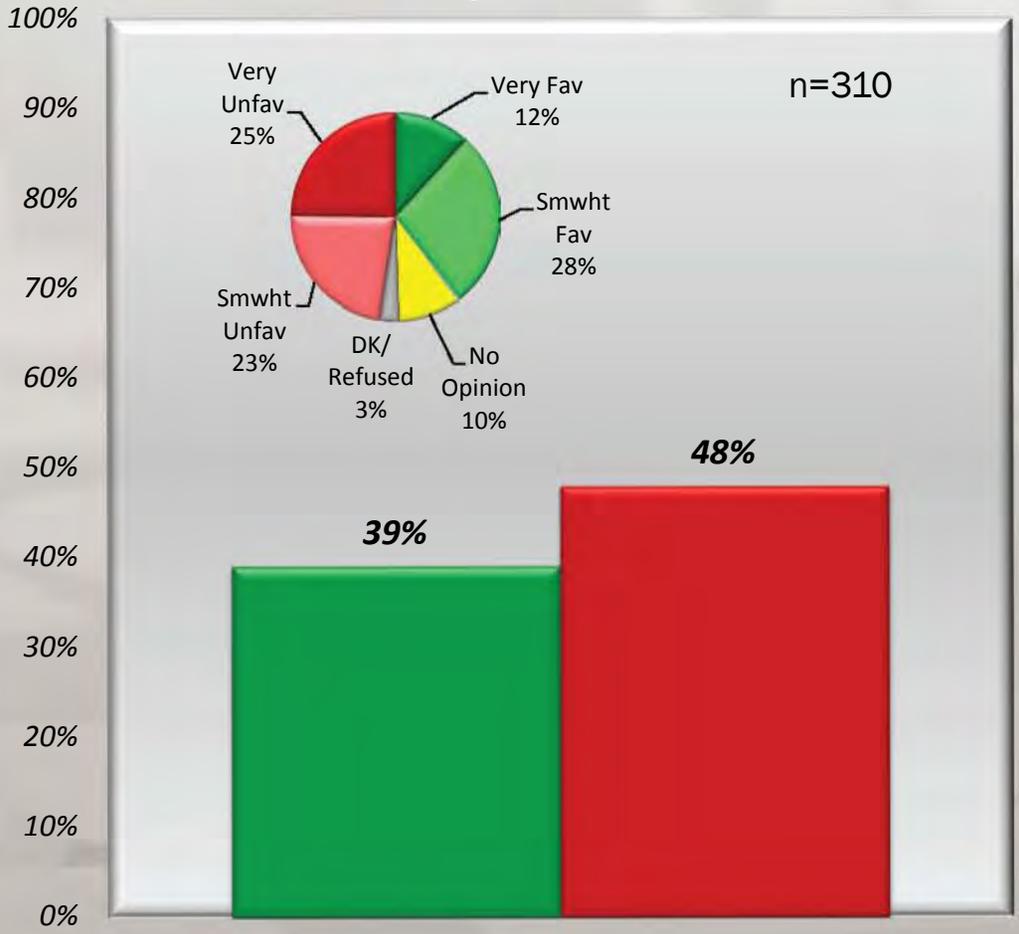
Familiarity and Opinion of the Stormwater Enterprise

Familiarity



■ Total Familiar ■ Total Not Familiar

Opinion



■ Total Favorable ■ Total Unfavorable

Summary and Recommendations

- Voters do perceive a crisis for flooding and run-off control need to be addressed in El Paso County.
- Voters do not yet believe that they have heard the solution to this problem, though a few have heard ideas that they generally like.
- A fee based on impermeable surface will be more popular than any tax-based approach. A bonding approach might be more popular, but also faces challenges related to debt and continuity.
- To succeed, any approach to these problems will needs to be:
 - Regional
 - Dedicated
 - Voter approved with specific projects and an overall plan that will guide the projects
 - Ongoing

Research Design and Demographics

Wilson Perkins Allen Opinion Research conducted a study of likely voters in El Paso County, Colorado.

WPA selected a random sample of likely voters from the Colorado voter file using Registration Based Sampling (RBS). The sample for this survey was stratified based on geography, age, gender, ethnicity, and party. This methodology allows us to avoid post-survey “weighting” which can reduce the reliability of survey results.

Respondents were contacted by phone via a live telephone operator interview November 17-18, 2013. The study has a sample size of n=402 likely voters. The margin of error is equal to $\pm 4.9\%$ in 95 out of 100 cases.



Demography

Age	Result
18-34	15%
35-44	14%
45-54	22%
55-64	23%
65-74	16%
75+	10%
Gender	
Male	48%
Female	52%
City	
CO Springs	80%
Outside	20%

Education	Result
≤High School	12%
Some College	23%
College Grad	33%
Post Grad	32%
Income	
<\$50k	23%
\$50k to <\$100	36%
\$100k+	26%
Party	
Republican	50%
Independent	28%
Democrat	22%

Vote History	Result
0-1 of 4	12%
2 of 4	12%
3 of 4	17%
4 of 4	59%
Ethnicity	
White	86%
Hispanic	8%
African-American	4%
Ideology	
Conservative	46%
Moderate	34%
Liberal	15%
Military	
Yes	33%
No	66%



For additional information about this data,
please feel free to contact:

Bryon Allen
Partner and COO

202.470.6300

BAllen@WPAResearch.com



WORK SESSION AGENDA ITEM

COUNCIL MEETING DATE: January 13, 2014

TO: President and Members of City Council

CC: Mayor Steve Bach

VIA: Laura Neumann, Chief of Staff/Chief Administrative Officer

FROM: Kara Skinner, Chief Financial Officer
Mike Sullivan, Human Resources Director
Victoria McColm, Risk Manager

Subject Title: A RESOLUTION REINSTATING LIMITATIONS ON JUDGMENTS AND RESCINDING PORTIONS OF RESOLUTION NOS. 82-89 AND 6-99 PERTAINING TO DAMAGE LIMITATIONS SET FORTH IN THE COLORADO GOVERNMENTAL IMMUNITY ACT

SUMMARY: Risk Management for the City and Colorado Springs Utilities requests that City Council approve the attached Resolution repealing Colorado Governmental Immunity Act (“CGIA”) damage limitation waivers approved by previous Council resolutions with respect to facilities owned and operated by the City and its enterprises.

PREVIOUS COUNCIL ACTION: In Resolution No. 82-89, approved May 9, 1989, Council approved a waiver of the statutory damage limitations for tort liability provided under CGIA for City-owned facilities and operations which are exempt from CGIA in instances where liability insurance had been purchased up to the extent and limits of the liability insurance policies in place.

BACKGROUND: Since 1986, the Colorado Springs City Council (“Council”) has, in accordance with §24-10-114(2), C.R.S., waived the damage limitations provided under the CGIA as to the City and its enterprises up to the levels of liability insurance either purchased or amounts self-insured by the respective entities. Where no insurance has been purchased, the damage limitations under CGIA have arguably been preserved. While the reason for the imposition of the waiver is not entirely clear based on the historical record, a memo to Council which accompanied Resolution No. 6-99 indicated that at least with respect to Memorial Hospital, Council wished to ensure that patients receiving care at Memorial were adequately compensated in the event they were harmed while receiving that care.

FINANCIAL IMPLICATIONS: The waiver of damage limitations has come with significant costs to the City and its enterprises. As mentioned above, in instances where the state has waived sovereign immunity, it has provided limitations on damages arising under that waiver. These statutory limitations, or caps, for state claims are currently \$350,000 for an individual per single occurrence, and \$990,000 for multiple persons per single occurrence. The existence of these caps reduces the City and enterprise exposure for judgments in tort cases brought under state law.

On the other hand, the waiver of the damage caps, as approved in past City Council resolutions, has had a number of impacts on the City and its enterprises, including unlimited exposure to liability in claims brought under federal law, increased insurance premiums in instances where insurance has been

purchased, and exposure to the maximum limits of self-insured retentions and to the limits of any purchased general liability policies, if policies have been purchased.

The waiver of these caps has been addressed differently by the City and its enterprises based on their specific operations. The City of Colorado Springs has not purchased general liability insurance for tort claims – resulting in liability to the extent of the statutory caps in state claims, which must be paid by the City and unlimited exposure for federal law claims. For example, the City has spent over \$5 million to resolve claims brought under federal law between fiscal years 2010 through 2012. In addition, under the limited liability policies which have been purchased by the City for specific types of claims, premium costs are higher due to the waiver of the statutory damage caps. Further, due to the waiver of the damage caps, the City’s Risk Management Department estimates that it has paid \$322,275 in excess of the CGIA damage limitations since 1988.

Because utility operations are generally subject to the statutory waiver of sovereign immunity, Colorado Springs Utilities has purchased general excess liability insurance, despite the fact that such purchase increases the potential payout amount of any claim due the City’s waiver of the damage caps. In doing so, Colorado Springs Utilities estimates that since 1995, it has paid approximately \$5,325,000 in insurance premiums associated with the waiver of damage limitations (or put another way, it would have paid approximately \$5,325,000 less in premiums if the statutory limits on tort liability provided in § 24-10-114, C.R.S., had not been waived). Utilities estimates that it is currently paying approximately \$350,000 per year in excess premiums. In addition, since 1995, either Utilities or its insurers have paid approximately \$1,010,000 in claims in excess of the statutory damage limitations.

While the Airport’s insurance premium costs and costs for other City facilities associated with the waiver are not known, it is believed that the cost of obtaining Airport liability insurance coverage would be less if the waiver were repealed.

As provided below, the City’s Risk Management Department recommends that the resolutions waiving the statutory damage caps be repealed. Upon such repeal, the City would seek to purchase excess public entity liability insurance, which includes coverage for federal claims, thus reducing the City’s liability under such claims to the amount of the City’s self-insured retentions.

BOARD/COMMISSION RECOMMENDATION: N/A

STAKEHOLDER PROCESS: N/A

ALTERNATIVES: N/A

RECOMMENDATION: It is recommended that City Council approve the proposed resolution repealing the waiver of CGIA damage limitations with respect to the City and its enterprises.

PROPOSED MOTION: Move adoption of the proposed Resolution.

Attachments:

- A Resolution Reinstating Limitations on Judgments and Rescinding Portions of Resolution Nos. 82-89 and 6-99 Pertaining to Damage Limitations Set Forth in the Colorado Governmental Immunity Act
- Resolution No. 82-89



Work Session Agenda Item

Council Meeting Date: January 13, 2014

To: President and Members of City Council

cc: Mayor Steve Bach

From: Councilmembers Don Knight and Andy Pico

Subject Title: Proposed Ordinances & Resolution Relating to Council's Confirmation Process for Mayoral Appointees

Summary: Attached are a number of draft documents relating to Council's confirmation of Mayoral appointees for Council discussion. Since Council's previous discussion of this issue at the November 12, 2013 work session (which was postponed until November 20, 2013), changes to the draft Council rule and the draft Ordinance amending Section 303 of the City Code were included to shorten the time period over which Council may request that the Mayor provide a plan to fill a position occupied by an interim appointee from twelve months to six months.

Previous Council Action: Council discussed the proposed ordinances and resolution at their November 12, 2013 work session, which was postponed and conducted on November 20, 2013, and at their December 9, 2013 work session.

Attachments:

- An Ordinance Amending Section 201 (Appointees) of Part 2 (Appointive Officers, General Provisions) of Article 2 (Officers of the City) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, As Amended, Pertaining to Confirmation Process for Mayoral Appointees
- An Ordinance Amending Section 303 (Appoint to Acting or Interim Capacity) of Part 3 (Powers and Duties of the Mayor) of Article 2 (Officers of the City) of Chapter 1 (Administration, Personnel and Finance) of the Code of the City of Colorado Springs 2001, As Amended, Pertaining to the Confirmation Process for Mayoral Appointees
- A Resolution Adopting an Amendment to the "City of Colorado Springs Rules and Procedures of City Council" Relating to General Procedures for Confirmation of Mayoral Appointees
- Exhibit A: Amendments to City Council Rule 7.3 – General Procedures for Confirmation of Mayoral Appointees

DRAFT
January 14, 2014

CITY ATTY'S OFFICE
CODE CHANGE REVIEW
ATTY INIT _____
DATE ____/____/____

ORDINANCE NO. 14-_____

AN ORDINANCE AMENDING SECTION 201 (APPOINTEES) OF PART 2 (APPOINTIVE OFFICERS, GENERAL PROVISIONS) OF ARTICLE 2 (OFFICERS OF THE CITY) OF CHAPTER 1 (ADMINISTRATION, PERSONNEL, AND FINANCE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE CONFIRMATION PROCESS FOR MAYORAL APPOINTEES

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

Section 1. Section 201 (Appointees) of Part 2 (Appointive Officers, General Provisions) of Article 2 (Officers of The City) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended, is amended by the addition of a new subsection C to read as follows:

1.2.201: APPOINTEES:

* * *

C. As provided by City Charter §§ 3-50 and 4-40(f), City Council shall promulgate rules of procedure for the confirmation of Mayoral appointees for inclusion in the City of Colorado Springs Rules and Procedures of City Council.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

DRAFT

January 14, 2014

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2014.

Finally passed: _____

Keith King, Council President

Mayor's Action:

- Approved: _____
- Disapproved: _____, based on the following objections:

Steve Bach, Mayor

Council Action:

- Finally adopted on a vote of _____, on _____.
- Amended and resubmitted _____.

Keith King, Council President

ATTEST:

Sarah B. Johnson, City Clerk

DRAFT
January 14, 2014

CITY ATTY'S OFFICE
CODE CHANGE REVIEW
ATTY INIT _____
DATE ____/____/____

ORDINANCE NO. 14-_____

AN ORDINANCE AMENDING SECTION 303 (APPOINT TO ACTING CAPACITY) OF PART 3 (POWERS AND DUTIES OF THE MAYOR) OF ARTICLE 2 (OFFICERS OF THE CITY) OF CHAPTER 1 (ADMINISTRATION, PERSONNEL, AND FINANCE) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO THE CONFIRMATION PROCESS FOR MAYORAL APPOINTEES

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

Section 1. Section 303 (Appoint to Acting Capacity) of Part 3 (Powers and Duties of the Mayor) of Article 2 (Officers of The City) of Chapter 1 (Administration, Personnel, and Finance) of the Code of the City of Colorado Springs 2001, as amended, is amended as follows:

1.2.303: APPOINT TO ACTING OR INTERIM CAPACITY:

A. The Mayor shall have the power to designate any ~~person~~ **City employee** to perform the duties of any position under the Mayor's control which is vacant or which ~~lacks~~ administration owing to the **temporary or short-term** absence or disability of the incumbent. That person shall be designated to a deputy or acting position and shall serve with the same powers and functions as the vacant position. (Ord. 11-18)

B. For those appointed positions set forth in City Charter § 4-40(f) and City Code § 1.2.201, when the appointee is unable, from any cause, to perform the duties of the office for more than a temporary or short-term absence, or no longer serves in the appointed position at the pleasure of the Mayor, the Mayor may appoint any person to perform the duties of the vacant appointed position for an interim period until a permanent appointee can be chosen and confirmed by the City Council. If the interim appointee serves in the vacant appointed position for more than ~~twelve (12)~~ **six (6)** months, the City Council may **request that the Mayor provide a plan to fill the vacancy. If the Mayor fails to provide a plan to fill the vacancy, City Council may,** pursuant to the City Council Rules of Procedure, commence the confirmation process to confirm the interim

DRAFT

January 14, 2014

appointee as the permanent appointee unless, for good cause shown, the Council agrees to recognize the interim appointee's continued service in the vacant appointed position.

Section 2. This ordinance shall be in full force and effect from and after its final adoption and publication as provided by charter.

Section 3. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this ____ day of _____, 2014.

Finally passed: _____

Keith King, Council President

Mayor's Action:

- Approved: _____
- Disapproved: _____, based on the following objections:

Steve Bach, Mayor

Council Action:

- Finally adopted on a vote of _____, on _____.
- Amended and resubmitted _____.

Keith King, Council President

ATTEST:

Sarah B. Johnson, City Clerk

A RESOLUTION ADOPTING AN AMENDMENT TO THE "CITY OF COLORADO SPRINGS RULES AND PROCEDURES OF CITY COUNCIL" RELATING TO GENERAL PROCEDURES FOR CONFIRMATION OF MAYORAL APPOINTEES

WHEREAS, City Council is authorized to make and publish its own rules and procedures and amend its own rules pursuant to the Charter of the City of Colorado Springs, §3-50; and

WHEREAS, City Council adopted its current "City of Colorado Springs Rules and Procedures of City Council" by Resolution No 42-13 dated April 9, 2013; and

WHEREAS, City Council finds that the "City of Colorado Springs Rules and Procedures of City Council" should be revised to improve the conduct of its business.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council of Colorado Springs hereby adopts Rule 7.3. General Procedures for Confirmation of Mayoral Appointees, attached hereto as Exhibit A, effective January 29, 2014.

DATED at Colorado Springs, Colorado, this _____ day of _____ 2014.

Keith King, Council President

ATTEST:

Sarah B. Johnson, City Clerk

PART 7 - PUBLIC HEARINGS

* * *

7-3. GENERAL PROCEDURES FOR CONFIRMATION OF MAYORAL APPOINTEES

A. The City Council is required by City Charter § 4-40(f) to confirm the Mayor's appointment of individuals to serve in the following positions: City Clerk, City Attorney, Municipal Judges, Chief Financial Officer, Police Chief, Fire Chief, Public Works Director, Parks Director, Community development Director, Airport Director, and any other director of a City Department division, office, agency or enterprise if the Mayor's appointment authority is set forth by ordinance (collectively, "appointee").

B. At the Mayor's request, the Council President shall select and appoint one or two Councilmembers to serve on the Mayor's appointee candidate selection committee. The Councilmember(s) serving on the selection committee shall keep confidential the details of candidate applications, resumes, curriculum vitae, references, and background information for those candidates who are not selected as the Mayor's appointee. The details of the Mayor's appointee's application resume, curriculum vitae, references, and background information may be released to the entire Council upon commencement of the confirmation process.

C. Upon the Mayor's notification to Council that an appointee has been selected, or that an appointment has been made or will be made following confirmation, the Council shall commence the following confirmation procedure:

1. The Mayor may notify Council by contacting the Council President in person or by telephone, or by delivering a written or emailed request for confirmation of the Mayor's appointee to the Council President. 2. Within two (2) business days of the Mayor's notice to Council, the Mayor or the Mayor's representative shall forward to Council the advertised position description for the office the appointee will hold, the appointee's application, resume, curriculum vitae, references, background information, and the proposed salary ("confirmation packet"). The information contained in the confirmation packet shall be clearly marked so that Councilmembers can easily determine which documents will be part of the confirmed appointee's personnel file as that term is defined by the Colorado Open Records Act, C.R.S. § 24-72-201, *et seq.* ("CORA"). Confirmation must commence within thirty (30) days after receipt of the confirmation packet

3. If one or more Councilmembers served on the Mayor's selection committee for the appointee, the Councilmember(s) shall be available to discuss one-on-one with other Councilmembers the process the selection committee followed that resulted in the selection of the appointee.

4. Within five (5) business days of receipt of the confirmation packet, any Councilmember may request additional information about the selection process, the appointee's qualifications or stakeholder recommendations by forwarding the request to the Council President. The Council President shall forward the request to the Mayor. The Mayor may provide the requested additional information.

5. Within five (5) business days of the Council's receipt of the confirmation packet, the Council President shall propose a confirmation schedule to the Mayor that may include, but is not limited to, the following events prior to formal consideration of the confirmation request at a Regular meeting: individual or group interviews of the appointee, a public input process, or a Work Session discussion. The proposed confirmation schedule shall ensure the confirmation process concludes no more than ninety (90) days following the date of receipt of the confirmation packet.

6. The Mayor may request changes to the President's proposed confirmation schedule to meet administrative or operational needs of the City. To the extent possible, the President should accommodate the Mayor's request and modify the proposed confirmation schedule accordingly. When final, the Council Administrator shall distribute the confirmation schedule to the Council and coordinate the confirmation events set forth in the confirmation schedule.

D. Council Action.

1. Events of Confirmation Prior to Formal Consideration.

a. Councilmembers shall review and be familiar with the information contained in the confirmation packet.

b. If the confirmation schedule includes individual or group interviews of the appointee, Councilmembers shall make every effort to meet with the appointee in person. If a Councilmember is unable to meet with the appointee in person, the Councilmember shall make arrangements to speak with the appointee individually by phone. Travel costs for out-of-town appointees shall be paid by the Administration.

c. Councilmembers may solicit stakeholder or public input on the appointee's qualifications for the position.

2. Formal Consideration of the Confirmation Request.

a. Confirmation shall be considered as New Business at a Regular or Special meeting of the Council.

b. The Mayor or the Mayor's representative may make a presentation and request confirmation of the appointee. The appointee, if present, may address the Council. The Council may inquire into the appointee's education, training, experience, and any other matters relevant to the appointee's qualifications or ability to fulfill the duties of the

position. The public shall be given an opportunity to speak about the appointee's education, training, experience, and any other matters relevant to the appointee's qualifications or ability to fulfill the duties of the position. The President shall preserve decorum and cause to be removed any citizen whose comments are not related to the appointee's qualifications or ability to fulfill the duties of the position.

c. Councilmembers, the Mayor, the Mayor's representative, or the appointee may request postponement of the confirmation so long as ninety (90) days have not elapsed since the Mayor's notice was delivered pursuant to Rule 7-3(C), above. The President shall state the purpose of the postponement and the date on which the confirmation will be taken up again. The motion to postpone shall be in accordance with Rule 3-17(E), above.

d. All appointees, except the City Attorney, shall be confirmed by the passage of a resolution receiving a concurring vote of a majority of the members of the full City Council. The appointee's confirmation resolution shall set forth the name of the appointee, the position to be held by the appointee and any other terms of the appointee's service the Mayor wishes to include.

e. The City Attorney shall be confirmed by the passage of an ordinance receiving a concurring vote of a majority of the members of the full City Council. The City Attorney's confirmation ordinance shall set forth the name of the City Attorney, the salary of the City Attorney, and any other terms of the appointee's service the Mayor wishes to include.

f. Failure to commence the confirmation process within thirty (30) days of the Mayor's notice, or to complete the confirmation process within ninety (90) days of the Mayor's notice, shall be deemed a *de facto* confirmation pursuant to the terms of City Charter § 4-40(f).

E. Suspension of this Rule.

1. For good cause shown, the President may suspend any procedural elements of this Rule at a Councilmember's or the Mayor's request. Good cause may include, but shall not be limited to, issues related to an appointee's current employment situation. The President shall notify each Councilmember of a decision to suspend any element of this Rule, and shall identify the element suspended and the reason for suspension. Any Councilmember may object to the President's decision to suspend any element of this Rule by sending written notice to the whole of Council, listing the Councilmember's objection to the element of this Rule that was suspended and grounds for the Councilmember's objection. The President may reverse his or her decision to suspend an element of this Rule based upon the objection, or may bring the objection to City Council for its consideration at the next available Work Session meeting.

2. Under no circumstances may the President suspend the deadlines within which the Council must act to confirm as set out in Rule 7-3(A), above, or the application of any provision of the Colorado Open Meetings Law as adopted in City Charter § 3-60(d) (“OML”).

F. In accord with CORA and the OML, the following procedures shall be followed:

1. Councilmembers shall keep confidential any information in the confirmation packet that is not subject to public disclosure pursuant to CORA.

2. If the confirmation schedule calls for interviews of the appointee, all interviews involving more than two (2) Councilmembers shall be noticed in compliance with the OML.

3. If the confirmation schedule calls for a public input meeting outside a scheduled Work Session or Regular Session meeting, notice of the public input meeting shall be noticed in compliance with the OML.

4. “Confirmation” shall be included in the agenda information included in any OML notice for appointee interviews involving more than two (2) Councilmembers, a public input meeting, a City Council Work Session meeting, or a City Council Regular Session meeting.

G. If the Mayor has made an interim appointment to a vacant appointed position pursuant to City Code § 1.2.303(B) and the interim appointee has served in the vacant appointed position for more than ~~twelve~~ six (6) months, the City Council ~~shall~~ may request that the Mayor provide a plan to fill the vacancy. If the Mayor fails to provide a plan to fill the vacancy, City Council may notify the Mayor that it intends to commence, on a date certain, the confirmation process to confirm the interim appointee as the permanent appointee unless, for good cause shown, the Council agrees to recognize the interim appointee’s continued service in the vacant appointed position.



WORKSESSION AGENDA ITEM

COUNCIL MEETING DATE: January 13, 2014

TO: President and Members of City Council

CC: Mayor Steve Bach

VIA: Laura Neumann, Chief of Staff/Chief Administrative Officer

FROM: Peter Wysocki, Planning and Development Director

Subject Title: Powerwood No. 7 and Northgate Estates No. 2 Annexations

SUMMARY:

Planning staff was recently approached by a local developer to “resurrect” and finalize two previously, Council-approved annexations that have not been perfected by the annexors by failure to sign the annexation agreements and request recordation of annexation plats. Since the authority to approve annexations rests with the Council, staff sought input on how to proceed with these annexations from Councilmembers Miller and Pico since the annexations are in their respective districts. Unfortunately, Councilmember Pico was unable to meet. Councilmember Miller suggested that staff bring these two annexations to a Council Work Session in order to discuss options with the entire Council.

In simple terms, the annexation process can be grouped into 5 steps:

1. Initial petition
2. Analysis by staff
3. Annexation ordinance
4. Annexation agreement
5. Annexation plat

The two annexations in question are: Powerwood No. 7 and Northgate Estates No. 2. The Powerwood No. 7 Annexation was approved by the City Council in September 2006, but was never finalized and recorded. Similarly, the Northgate Estates No. 2 annexation was approved by the City Council in June 2008, and was never finalized and recorded. There is currently only one owner for both properties and he now desires that the annexation process be completed so that both properties can be annexed into the City.

PREVIOUS COUNCIL ACTION:

Pursuant to Council’s direction during the October 21, 2013 Work Session meeting, this item was tabled for the January 13, 2014 meeting to discuss the Fiscal Impact Analysis reports submitted by the

City Budget Office. Following the required notifications and due process, the City Council on September 12, 2006 and subsequently on September 26, 2006 approved the Powerwood No. 7 Annexation. Council then approved the Northgate Estates No. 2 Annexation on June 10, 2008 and June 24, 2008. The Mayor signed and the City Clerk attested to two approved ordinances.

BACKGROUND:

Powerwood No. 7:

- The annexation petition was submitted to the City in August 2005 by the previous owner (annexor) of the property;
- On September 13, 2005, the City Council accepted the petition and referred the annexation to City Administration (City Planning) for processing;
- City Planning staff, working together with various other departments and review agencies, prepared the annexation agreement and processed the companion applications for a master plan (Powerwood Master Plan) and determination of zoning (to Agricultural);
- Upon the annexor's acceptance, the annexation agreement, master plan and zoning were presented to the City Planning Commission with staff's recommendation for approval;
- On April 6, 2006, the City Planning Commission recommended that City Council approve the annexation, including the annexation agreement, the master plan and the zone change;
- After the required notifications and due process requirements were completed, City Council on September 12, 2006, and subsequently on September 26, 2006, approved the annexation ordinance, related resolutions, annexation agreement, master plan and zone change;
- Prior to the affixing of signatures and the recording of the ordinance, annexation agreement and plat, the owner of the property fell into bankruptcy and lost control of the property;
- The applications went dormant and the financial institution that took possession of the property expressed no interest in finalizing the annexation;
- In July 2010, a new owner secured the property from the bank and then sold the property to the current owner in January 2013;
- During this time frame, the City requested that the project be withdrawn and removed from consideration. The owner requested that the project be placed on "hold".
- The immediate previous owner and the current owner of the property, Cumbre Vista, LLC, approached the City regarding finalizing the annexation and developing the property for an apartment complex;
- After consulting with the City Attorney's office, staff advised the owner that he may either begin the annexation process anew or ratify the previously submitted annexation petition, as the new owner;
- On April 16, 2013, the new owner ratified the previous annexation petition and signed the annexation agreement; and
- It is now necessary for the annexation plat to be modified to reflect the current owner and for the City to sign the annexation plat and agreement and then record the previously approved annexation ordinance, agreement and plat.

Northgate Estates No. 2

- The annexation petition was submitted to the City on April 23, 2007 by the previous owner (annexor) of the property;
- In July 2007, the City Council accepted the petition and referred the annexation to City Administration (City Planning) for processing;
- City Planning staff, working together with various other departments and review agencies, prepared the annexation agreement and processed companion applications for a development plan (Northgate Estates Filing No. 3 Development Plan included a church and two office buildings) and to zone the property (to Office Complex);

- Upon the annexor's acceptance, the annexation agreement, development plan and zoning were presented to the City Planning Commission with staff's recommendation for approval;
- On April 3, 2008, the City Planning Commission recommended that City Council approve the annexation, including the annexation agreement, the development plan and the zone request;
- After the required notifications and due process were completed, City Council on June 10, 2008, and subsequently on June 24, 2008, approved the annexation ordinance, related resolutions, annexation agreement, development plan and zone request;
- Prior to the affixing of signatures and the recording of the ordinance, annexation agreement and plat, the new owner of property placed the project on "hold" and the applications went dormant;
- During this time frame, the City requested that the project be "withdrawn" and removed from consideration, but the owner requested that the project be placed on "hold".
- The current owner of the property, Cumbre Vista, LLC, approached the City regarding finalizing the annexation and developing the property for a church and two office buildings;
- After consulting with the City Attorney's office, staff advised the owner that he may either begin the annexation process anew or ratify the previously submitted annexation petition, as the new owner;
- The owner has not yet ratified the previous annexation or signed the annexation agreement;
- It is now necessary for the annexation plat to be modified to reflect the current owner and for the City to sign the annexation plat and agreement and then record the previously approved annexation ordinance, agreement and plat.

FINANCIAL IMPLICATIONS:

Pursuant to Council's direction during the October 21, 2013 meeting, attached are the Fiscal Impact Analysis Reports from the City Budget Office.

PLANNING COMMISSION RECOMMENDATION:

The City Planning Commission unanimously approved the Powerwood No. 7 Annexation, the Powerwood Master Plan and the establishment of a zone on April 6, 2006. The City Planning Commission unanimously approved the Northgate Estates No. 2 Annexation, the Northgate Estates Filing No. 3 Development Plan and the establishment of zone applications.

STAKEHOLDER PROCESS:

Both projects were reviewed and processed using the City's standard notification processes as required by City Code during 2005-2006 and 2007-2008.

ALTERNATIVES:

City Council is asked to consider and offer one the following directions to staff:

1. **Accept and reaffirm the previous City Council's approval of the applications.**

This alternative will be the simplest and most expeditious with no additional work. It essentially honors the previously approved ordinances and annexation agreements.

2. **Direct staff to renegotiate the annexation agreements with the applicant and to prepare revised annexation agreements, master or development plans and zone changes for City Council review and approval.**

This alternative would honor the previously approved annexation ordinances but not the agreements. It would allow the Council to re-open the agreements and negotiate new terms and conditions. New agreements would be brought back to Council for consideration.

3. Direct City Staff and the applicant to begin the annexation, plan review and establishment of zone application processes anew and void all previous City approvals.

This alternative would start entirely new annexation processes, including public hearings on the ordinances, review of fiscal impact analyses and negotiation of new annexation agreements.

RECOMMENDATION:

Based on the size, location and terms and conditions of the existing annexation agreements, staff recommends Alternative #1.

Attachments:

- PowerPoint Presentation
- Attachment A - Ordinance No. 06-164 for the Powerwood No. 7 Annexation
- Attachment B - Ordinance No. 08-94 for the Northgate Estates No. 2 Annexation
- Attachment C - Annexation Agreement for the Powerwood No. 7
- Attachment D - Annexation Agreement for the Northgate Estates No. 2
- Attachment E - Revised Fiscal Impact Analysis for Powerwood No. 7
- Attachment F - Revised Fiscal Impact Analysis for Northgate Estates No. 2

Ordinance No. 06-164

**AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA
SOMETIMES KNOWN AS POWERWOOD NO. 7 ADDITION AS HEREINAFTER
SPECIFICALLY DESCRIBED IN EXHIBIT "A"**

WHEREAS, the City Council of the City of Colorado Springs on August 8, 2006 adopted a resolution entitled "Resolution Finding a Petition for Annexation of That Area Sometimes Known as Powerwood No. 7 Addition to be in Substantial Compliance with Section 31-12-107(1) C.R.S. and Setting a Hearing Date for the Colorado Springs City Council to Consider the Annexation of the Area"; and

WHEREAS, pursuant to notice required under Section 31-12-108 C.R.S., the Municipal Annexation Act of 1965 as amended, hereinafter referred to as the Annexation Act, the City Council of Colorado Springs held on September 12, 2006 a hearing pertaining to said annexation; and

WHEREAS, owners of one hundred percent (100%) of the area have petitioned for such annexation; and

WHEREAS, the City Council of Colorado Springs has by resolution made findings of fact and conclusions of law based thereon and determinations pertaining to said annexation, and has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

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

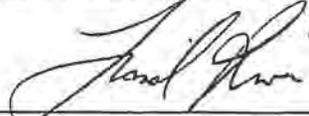
Section 1. Attached hereto and incorporated herein by reference as if fully set forth herein is Exhibit "A," a legal description of the area sometimes known as Powerwood No. 7 Addition.

Section 2. The area sometimes known as Powerwood No. 7 Addition as set forth in Exhibit "A" is hereby annexed to the City of Colorado Springs.

Section 3. When this annexation is complete, said area shall become a part of the City of Colorado Springs for all intents and purposes on the effective date of this ordinance, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 12th day of September, 2006.


MAYOR

ATTEST:

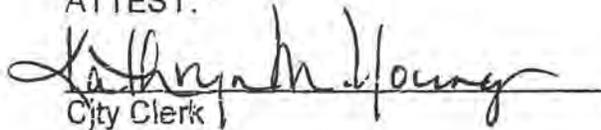

CITY CLERK

Finally passed, adopted and approved this 26th day of September, 2006.



Mayor

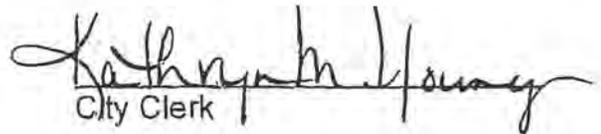
ATTEST:



City Clerk

I HEREBY CERTIFY that the foregoing ordinance entitled "AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA SOMETIMES KNOWN AS POWERWOOD NO. 7 ADDITION AS HEREINAFTER SPECIFICALLY DESCRIBED IN EXHIBIT "A"" was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on September 12th, 2006; that said ordinance was passed at a regular meeting of the City Council of said City, held on the 26th day of September, 2006, and that the same was published in full in the Daily Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City this 26th day of September, 2006.



City Clerk

AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA KNOWN AS NORTHGATE ESTATES ADDITION NO. 2 AS HEREINAFTER SPECIFICALLY DESCRIBED IN EXHIBIT "A"

WHEREAS, the City Council of the City of Colorado Springs on May 13, 2008 adopted a resolution entitled "Resolution Finding a Petition for Annexation of That Area Known as Northgate Estates Addition No. 2 to be in Substantial Compliance with Section 31-12-107(1) C.R.S. and Setting a Hearing Date of June 10, 2008 for the Colorado Springs City Council to Consider the Annexation of the Area"; and

WHEREAS, pursuant to notice required under Section 31-12-108 C.R.S., the Municipal Annexation Act of 1965 as amended, hereinafter referred to as the Annexation Act, the City Council of Colorado Springs held on June 10, 2008 a hearing pertaining to said annexation; and

WHEREAS, owners of one hundred percent (100%) of the area have petitioned for such annexation; and

WHEREAS, the City Council of Colorado Springs has by resolution made findings of fact and conclusions of law based thereon and determinations pertaining to said annexation, and has determined that said area should be annexed forthwith as part of the City of Colorado Springs.

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

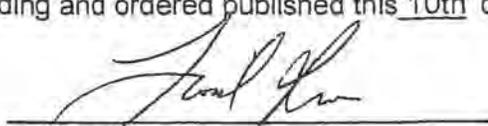
Section 1. Attached hereto and incorporated herein by reference as if fully set forth herein is Exhibit "A," a legal description of the area known as Northgate Estates Addition No. 2.

Section 2. The area known as Northgate Estates Addition No. 2 as set forth in Exhibit "A" is hereby annexed to the City of Colorado Springs.

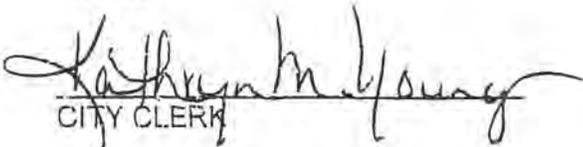
Section 3. When this annexation is complete, said area shall become a part of the City of Colorado Springs for all intents and purposes on the effective date of this ordinance, with the exception of general taxation, in which respect said annexation shall not be effective until on or after January 1 next ensuing.

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by the City Charter.

Introduced, read, passed on first reading and ordered published this 10th day of June, 2008.

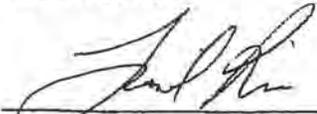

MAYOR

ATTEST:

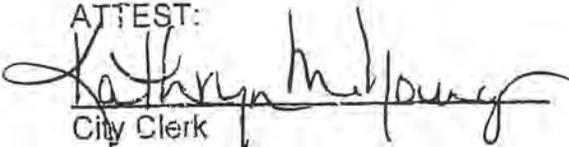

CITY CLERK

CPC A 06-00157 / bt

Finally passed, adopted and approved this 24th day of June 2008.



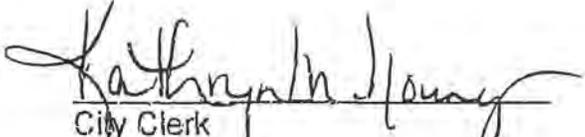
Mayor

ATTEST:


City Clerk

I HEREBY CERTIFY, that the foregoing ordinance entitled **"AN ORDINANCE ANNEXING TO THE CITY OF COLORADO SPRINGS THAT AREA SOMETIMES KNOWN AS NORTHGATE ESTATES ADDITION NO. 2 AS HEREINAFTER SPECIFICALLY DESCRIBED IN EXHIBIT "A"** was introduced and read at a regular meeting of the City Council of the City of Colorado Springs, held on June 10, 2008, that said ordinance was passed at a regular meeting of the City Council of said City, held on the 24th day of June 2008, and that the same was published in full in the Daily Transcript, a newspaper published and in general circulation in said City, at least ten days before its passage.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the City, this 24th day of June 2008.



City Clerk

EXHIBIT A

THE EAST HALF OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 6, TOWNSHIP 12 SOUTH, RANGE 66 WEST OF THE 6th P.M., COUNTY OF EL PASO, STATE OF COLORADO MORE PARTICULARLY DESCRIBED AS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID SECTION 6, SAID SOUTHEAST CORNER BEING A POINT ON THE NORTH RIGHT-OF-WAY LINE OF NORTHGATE ROAD AS RECORDED IN BOOK 1728 AT PAGE 449; THENCE N89°40'33"W ON SAID NORTH RIGHT-OF-WAY LINE A DISTANCE OF 332.09 FEET; THENCE N01°31'08"W A DISTANCE 662.35 FEET; THENCE S89°39'14"E A DISTANCE OF 332.55 FEET; THENCE S01°28'47"E A DISTANCE OF 662.21 FEET, MORE OR LESS, TO THE POINT OF BEGINNING AND CONTAINING 5.05 ACRES, MORE OR LESS.

CPC A 06-00157/bt

ATTACHMENT B

**POWERWOOD NO.7 ANNEXATION
ANNEXATION AGREEMENT**

THIS POWERWOOD NO. 7 ANNEXATION AGREEMENT ("Agreement"), dated the ____ day of _____, 2013, is between the **CITY OF COLORADO SPRINGS**, a home rule city and Colorado municipal corporation ("City"), and **CUMBRE VISTA LLC**, a Colorado limited liability company ("Annexor").

**I.
INTRODUCTION**

Annexor owns all of the approximately 12.2 acres of real property located in El Paso County, Colorado, identified and described in the legal description attached as Exhibit A and made a part of this Agreement (referred to as the "Property").

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. The Annexor will be required to expend substantial amounts for installation of infrastructure needed to service the Property and, therefore, desires to clarify Annexor's obligations for installation of or payment for any off-site infrastructure or improvements and with regard to the City's agreements with respect to provision of services to the Property and cost recoveries available to Annexor. Subject to the terms and conditions set forth in this Agreement, both the City and Annexor wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which are acknowledged by each of the parties, the City and Annexor agree as follows.

**II.
ANNEXATION**

Annexor has petitioned the City for annexation of the Property. The annexation will become effective upon final approval by the City Council and the recording of the annexation plat and annexation ordinance with the El Paso County Clerk and Recorder.

All references to the Property or to the Annexor's Property are to the Property described in Exhibit A, except as otherwise indicated.

**III.
LAND USE**

An amendment to the Powerwood 3 - 6 Master Plan (the "Master Plan") has been proposed, submitted, reviewed and approved by the City Council on September 12, 2006. Annexor will comply with the approved Master Plan or an amended Master Plan approved in accord with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

**IV.
ZONING**

A. Zoning. The City Planning and Community Development Department of the City agrees to recommend that the initial zone established for Annexor's Property be A/AO (Agricultural with Commercial Airport Overlay) upon annexation (pursuant to a separate establishment of zone application). While zoned A/AO, a development plan shall be required for any use requiring a building permit except for agricultural uses. Annexor acknowledges and understands that the City Council determines the appropriate zone for the Property, and this recommendation does not bind the Planning Commission or City Council to adopt an A/AO zone for the Property.

B. Change of Zoning. Future change of zoning requests shall conform to the Master Plan, as approved or as amended by the City. Change of zoning in accord with the land uses reflected on the Master Plan will occur prior to actual development of the site.

V.

PUBLIC FACILITIES AND IMPROVEMENTS

A. General. As land is annexed into the City it is anticipated that land development will occur. In consideration of this land development the City requires public facilities and improvements to be designed, extended, installed, constructed, dedicated and conveyed as part of the land development review and construction process. Public facilities and improvements are those improvements to property which, after constructed by the Annexor and accepted by the City, shall be maintained by the City or another public entity. Generally, the required public facilities and improvements and their plan and review process, design criteria, construction standards, dedication, conveyance, cost recovery and reimbursement, assurances and guaranties, and special and specific provisions are addressed in Chapter 7, Article 7 of the City Code (the "Subdivision Code"). Public facilities and improvements include but are not necessarily limited to: 1.) Utilities for water, wastewater, fire hydrants, electric, gas, streetlights, telephone and telecommunications; 2.) Streets, alleys, traffic control, sidewalks, curbs and gutters, trails and bicycle paths; 3.) Drainage facilities for the best management practice to control, retain, detain and convey flood and surface waters; 4.) arterial roadway bridges; 5.) parks; 6.) schools; and 7.) other facilities and improvements warranted by a specific land development proposal.

It is understood that all public facilities and improvements shall comply with the provisions of the Chapter 7, Article 7 of the City Subdivision Code, unless otherwise specifically provided for under the terms and provisions of this Agreement. Those specifically modified public facilities and improvements provisions are as follows:

B. Metropolitan Districts. The Annexor and City agree that the Woodmen Road Metropolitan District and the Woodmen Heights Metropolitan District have been created to design, extend, install and construct specific public facilities and improvements as identified in this Agreement.

1. Woodmen Road Metropolitan District (WRMD). Annexor acknowledges that Woodmen Road shall be designed and constructed to meet City Subdivision Code and Public Works Policy Manual design standards as identified and in accord with the County's Major Thoroughfare Plan and the City's Intermodal Transportation Plan. The City has previously entered into an Intergovernmental Agreement (the "Woodmen Road IGA"), approved February 25, 2003, concerning Woodmen Road with the WRMD and the County. The Woodmen Road IGA provides for construction by the WRMD of improvements to Woodmen Road required by the City. In full satisfaction of Annexor's obligation for any needed improvements to Woodmen Road, Annexor agree to petition for inclusion of the Annexor's Property into the WRMD.

2. Woodmen Heights Metropolitan District (WHMD). Annexor acknowledges that specified public improvements shall be designed and constructed to meet City Subdivision Code and Public Works Policy Manual design standards. It should be noted that WHMD will be responsible for the design and construction of area roadway improvements including Marksheffel Road, Tutt Boulevard and Black Forest Road to meet City Subdivision Code and Public Works Policy Manual design standards.

C. Streets and Traffic Control. The Annexor agrees to construct, at the Annexor's expense (unless provided by the WRMD or the WHMD, as more particularly discussed in this Agreement and except as expressly provided to the contrary) those street and/or traffic improvements adjacent to or within the Property. These improvements shall also include dedications of rights-of-way and easements, and extension of streets and rights-of-way. The provisions of City Code §§ 7.7.706 (Reimbursements) and 7.7.1001-1006 (Arterial Roadway Bridges) are excluded. City participation or reimbursement for Arterial Streets and Arterial Bridges within the Property will not be allowed.

1. On-Site or Adjacent Streets. The following streets have been identified in the annexation process as those required to be constructed and/or improved by the Annexor at the time of project development. The Annexor and City agree that other streets may be required to be constructed and/or improved as specific future development projects warrant construction and/or improvement.

a. Tutt Boulevard. Tutt Boulevard currently runs adjacent to and along the western boundary of the Property. Tutt Boulevard shall be constructed to meet standards as a minor arterial street with on-street bike lanes and a raised median. Annexors shall be responsible for dedicating any needed right-of-way for Tutt Boulevard, including temporary slope easements, as required. The Annexor's responsibility for the construction of Tutt Boulevard and associated costs shall be in accord with this Agreement. Tutt Boulevard is adjacent to the Property, and the Annexor shall participate equitably on a per-acre basis with the Powerwood No. 2 and Powerwood Nos. 3-6 annexors and/or property owners in the costs for construction of Tutt Boulevard, which shall include cost recovery for right-of-way dedication to the owners of property located on the west side of Tutt Boulevard in accord with the Powerwood No. 2 Annexation Agreement. Annexor participation for the costs of construction of Tutt Boulevard (but not for cost recovery for right-of-way dedication), is currently contemplated to be satisfied through the Annexor's and the Property's participation in the WHMD. If the WHMD does not fully fund the construction of Tutt Boulevard, then the Annexor's Property will share on a prorata, per-acre basis with the annexors and/or owners of the Powerwood Nos. 3-6 properties, all of the costs of the design, right-of-way dedication and construction of Tutt Boulevard that are required to be paid by the Powerwood No. 3 property under the terms of its annexation agreement with the City.

b. Sorpresa Lane. Sorpresa Lane currently runs adjacent to and along the northern boundary of the Property. The Annexor shall be responsible for dedicating any additional needed right-of-way for Sorpresa Lane with sixty feet (60') of total right-of-way, and an additional three feet (3') public improvement easement on each side of the right-of-way, to the extent and in the locations that Sorpresa Lane lies within or adjacent to the Property as shown on the Master Plan. Additionally, the Annexor shall be responsible for dedicating any needed right-of-way for a deceleration lane on Tutt Boulevard for the right turn onto Sorpresa Lane. Annexor shall be entitled to two accesses off Sorpresa Lane generally as shown on the Master Plan. It is anticipated that the WHMD will construct Sorpresa Lane. To the extent that the construction of Sorpresa Lane is not funded by the WHMD, the Annexor shall be responsible for the costs of the design and construction of Sorpresa Lane where it lies within or adjacent to the Property. Adjacent property owners will be responsible for the costs of design and construction of Sorpresa Lane within their respective properties. The City agrees to negotiate in good faith to include a cost recovery provision for Sorpresa Lane, consistent with the terms of this Paragraph 2, in the annexation agreements of any properties that are adjacent to this section of Sorpresa Lane at the time of any future annexation request. Cost recovery shall entitle the party that actually constructs any portion of this section of Sorpresa Lane to a cost recovery, consistent with the provisions of this Paragraph 2, for the costs incurred in the design and construction (but not right-of-way) of Sorpresa Lane, and such cost recovery shall be administered in accord with City Code §§ 7.7.705.B.

2. Construction of Internal Public Street Network to Serve Property. It is recognized that the lack of a phasing requirement for the Property may result in the need for the Annexor to construct portions of the internal public street network, as illustrated on the approved Powerwood Nos. 3-6 Master Plan, that are not adjacent to the Property. In order to accommodate this situation Annexor shall dedicate the full right-of-way and any slope easements required for any internal public streets, as illustrated on the approved Master Plan, and any temporary construction easement reasonably required to complete construction of those internal roads, at any time requested by the City or by an adjacent owner that commences development. Additionally, if Annexor incurs costs associated with the design and construction of internal public streets within the Property, Annexor shall be eligible for cost recovery from adjacent owners having frontage on the street in accord with City Code § 7.7.705.B.

3. Adjacent Street Construction and Slope Easements. The City agrees to use all reasonable efforts to obtain from the owners of any properties adjacent to the Property, any temporary

slope or construction easement, including the City and Colorado Springs Utilities, if applicable, that may be reasonably necessary to accommodate any of the road construction obligations assumed by the Annexor under this Agreement.

4. Traffic Control Devices. Annexor shall pay for installation of traffic and street signs, striping, and traffic control devices, and permanent barriers, together with all associated conduit for all streets within or contiguous to the Property as determined necessary by the City and in accord with uniformly applied criteria set forth by the City. Traffic signals will be installed only after the intersection warrants signals, as outlined in the Manual on Uniform Traffic Control Devices in use at the time or another nationally accepted standard. Once the intersection meets the outlined criteria, the City will notify the Annexor in writing and the Annexor will install the traffic signal within one hundred eighty (180) days after receipt of that notice. The Annexor will be responsible for all components of the traffic signal, except the City will supply the controller equipment and cabinet (Annexor will reimburse the City for its reasonable costs of the equipment and cabinet). The Annexor shall be required to escrow funds for the signal at Tutt/Sorpresa unless the WHMD, on behalf of the Annexor, either posts financial assurances or executes an acceptable intergovernmental agreement with the City on terms acceptable to the City to secure the future construction of these signals.

D. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Annexor to the City and approved by the City Engineer, prior to recording the annexation plat. Final Drainage Reports and Plans shall be prepared and submitted by the Annexor to the City and approved by the City Engineer, prior to recording subdivision plats. Annexor shall comply with all drainage criteria, standards, policies and ordinances in effect at the time of development, including but not limited to the payment of any drainage, arterial bridge and detention pond fees and the reimbursement for drainage facilities constructed. Annexor shall be responsible for conformance with the applicable Drainage Basin Planning Study.

E. Tutt Blvd. Cottonwood Creek Bridge. The City has reasonably determined that Annexor is required to participate financially on a fair share basis in the Tutt Boulevard bridge over Cottonwood Creek. The current estimate (design, right-of-way and construction) for the bridge is One Million Seven Hundred Thousand Dollars (\$1,700,000) and the Annexor's contribution has been determined to be one and eighty-nine hundredths percent (1.89%) of the total cost or Thirty-Two Thousand Eighty-Six Dollars (\$32,086.00) based upon 12.2 platted acres within the Property, the fair share cost equates to a Cottonwood Creek Basin bridge surcharge fee of Two Thousand Six Hundred Thirty Dollars per acre (\$2,630/acre). This financial obligation shall be paid as a per-acre bridge surcharge fee imposed upon all subdivision plats filed within the Property and shall be in addition to the standard bridge fee for the Cottonwood Creek Drainage Basin. The platting of any property owned by the City is excluded from this platting fee. The bridge surcharge fee shall be Two Thousand Six Hundred Thirty Dollars per acre (\$2,630/acre) for 2006. The bridge surcharge fee shall be adjusted annually at the same rate as the drainage and bridge fees are adjusted by the City within the Cottonwood Creek Basin. The City will make a good faith effort to include requirements regarding contributions to the Tutt Bridge in conjunction with the future annexation requests and development plan approval requests received for property located to the east and north of the Property. The City will escrow all Tutt Bridge funds for funding future cost recovery agreements associated with the bridge or for actual bridge construction.

F. Parks: Construction of Parks and Park Fees. Annexor agrees to join and participate in the WHMD which shall own, maintain and operate the regional parks within the Powerwood No. 3-6 Master Plan area. In consideration of Annexor's agreement to participate in the WHMD, which shall construct, own and operate the parks within the property, Since the proposed park does not completely satisfy the park land dedication requirement, the Annexor will only be required to pay for 14.6% percent of the fee-in-lieu of park land dedication (per the City's Subdivision Code) calculated on the initial Master Plan densities. If, however, a future Master Plan amendment results in a net density increase above that anticipated in the initial Master Plan, Annexor agrees to pay fees-in-lieu of the additional land dedication requirement that is not satisfied by the WHMD regional park. Fees will be assessed at time of platting. The fee owed to the City will be based on the then current Park and School fee rates found in Chapter 7,

Article 7 of the City Code.

G. Schools. The Annexor agrees that school fees in lieu of land dedication will be required on any of the Property that would be zoned and developed residentially in the future. It is anticipated that because of the size of the Property, fees will be required rather than dedication of land for schools.

H. Improvements Adjacent to Park and School Lands. Streets and other required public improvements adjacent to park and school lands will be built by the Annexor without reimbursement by the City or the School District.

VI.
UTILITIES

A. Colorado Springs Utilities' Services Colorado Springs Utilities' (Springs Utilities) water, non-potable water, wastewater, electric, streetlight and gas services (together referred to as "Utility Service" or "Utility Services") are provided to eligible customers upon connection to the Springs Utilities' facilities and systems on a "first-come, first-served" basis, provided that (among other things) the City and Springs Utilities determine that the applicant meets all applicable City ordinances and regulations, and applicable Springs Utilities' tariff requirements and regulations for each application for Utility Services.

Furthermore, Annexor shall ensure that the connection and/or extension of Utility Services to the Property are in accord with all codes and regulations, Springs Utilities' tariffs, rules, and policies, City ordinances, resolutions, and policies, and the Pikes Peak Regional Building Department Code, in effect at the time of Utility Service connection and/or extension.

In addition, availability of Utility Services is contingent upon the availability of public rights-of-way or private rights-of-way that Springs Utilities, in its sole discretion, determines are required for the extension of any proposed Utility Service from the Springs Utilities' system facilities that currently exist or that may exist at the time of the proposed extension.

Annexation of the Property does not imply a guarantee of wastewater treatment facility capacity or any other Utility Service supply or capacity. Springs Utilities does not guarantee Utility Service to the Property. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Annexor, and the City and Springs Utilities make no commitments as to the availability of any Utility Service at future times.

Springs Utilities' connection requirements may, in Springs Utilities' sole discretion, require the Annexor to provide a bond(s), or to execute a Revenue Guarantee Contract, or another Springs Utilities-approved guarantee, before Springs Utilities authorizes extension of Utility Services and/or other system improvements. Annexor acknowledges that the connection requirements shall include Annexor's payment of all applicable development charges, recovery agreement charges, advance participation fees, aid-to-construction charges and other fees or charges applicable to the requested Utility Service; and may also include Annexor's payment of any system improvements that Springs Utilities determines necessary to provide Utility Services to the Property or any costs Springs Utilities incurs to acquire additional service territories associated with the Utility Services. Annexor acknowledges that recovery agreement charges, advance participation costs, and aid-to-construction charges may vary over time and by location. Annexor is responsible for contacting Springs Utilities' Customer Contract Administration at (719)668-8111 to ascertain which fees or charges apply to the Property at the time of connection, extension or development.

B. Dedications and Easements Annexor, at its sole cost and expense, shall dedicate by plat and convey by recorded writing, all property (real and personal) and easements that Springs Utilities, in its sole discretion, determines are required for all electric, gas, water, non-potable water, wastewater and streetlight utility facilities necessary to serve the Property, including, but not limited to, any gas regulation or electric substation sites, water storage reservoir/tank sites and wastewater or water pump station sites.

Springs Utilities, in its sole discretion, shall determine the location and size of all property necessary to be dedicated or otherwise conveyed. Annexor shall provide Springs Utilities all written, executed conveyances either (a) prior to platting, or (b) prior to the development of the Property, as determined by Springs Utilities in its sole discretion. Annexor shall pay all fees and costs applicable to or associated with the platting of the real property to be dedicated. Dedicated properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded to the City, free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802. Further, all dedications and conveyances shall be subject to Springs Utilities' environmental review. Springs Utilities has no obligation to accept any property including, but not limited to, property that is environmentally unsound as determined by Springs Utilities in its sole discretion. All easements by separate instrument shall be conveyed using the Springs Utilities' then-current Permanent Easement Agreement form.

If Annexor, with prior Springs Utilities' approval, relocates or alters any existing utility facilities within the Property, then the relocation or alteration of these facilities shall be at the Annexor's sole cost and expense. If Springs Utilities, in its sole discretion, determines that Annexor's relocation or alteration requires new or updated easements, Annexor shall convey those easements prior to relocating or altering the existing utility facilities using Springs Utilities' then-current Permanent Easement Agreement form. Springs Utilities will only relocate existing gas or electric facilities during time frames and in a manner that Springs Utilities, in its sole discretion, determines will minimize outages and loss of service.

C. Extension of Utility Facilities by Springs Utilities Subject to the provisions of this Article VI, including sections A and B above, and all applicable Springs Utilities' tariffs, rules, regulations and standards, Springs Utilities will extend electric and gas service to the Property if Springs Utilities, in its sole discretion, determines that there will be no adverse effect to any Utility Service or utility easement.

- Gas Service Any extension of gas facilities must be in accord with the Springs Utilities Line Extension and Service Standards. Annexor shall be solely responsible for all costs and expenses including, but not limited to, attorneys fees that Spring Utilities incurs due to any Colorado Public Utilities Commission (CPUC) filings made or arising from annexation of the Property. Annexor shall support and make any CPUC filings that are necessary to support all Springs Utilities CPUC filings.
- Electric Service Any extension of electric facilities required to serve the Property must be in accord with the Springs Utilities' Line Extension and Service Standards. Springs Utilities, in its sole discretion, may require Annexor to enter into a Revenue Guarantee Contract for the extension of electric service. Once the annexation becomes effective, Springs Utilities will acquire the electric service territory within the Property that is not served by Springs Utilities from the then-current electric service provider, in accord with C.R.S. §§ 40-9.5-201 or 31-15-707 *et seq.* Annexor shall be solely responsible for all costs and fees (including, but not limited to attorney's fees) that Springs Utilities incurs as a result of or associated with the acquisition of such electric service territory. Accordingly, Springs Utilities may, in its sole discretion, require Annexor to contemporaneously escrow the monies required for the acquisition of existing electric facility installations, easements and property from the then-current electric service provider. Any escrowed monies shall be held by Springs Utilities without interest. At Annexor's sole expense, any overhead lines providing electric service within the Property that are converted to underground service must be so converted in a manner that Springs Utilities, in its sole discretion, determines will minimize outages and loss of Utility Service.

D. Wastewater Service Extensions by Annexor Annexor must extend and install all necessary wastewater main lines, wastewater pump stations, and service lines to the Property and within the Property at Annexor's sole cost and expense and in accord with all applicable Springs Utilities' tariffs, rules, regulations, Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for wastewater service. Annexor shall be solely responsible for all costs and fees associated with engineering, materials, and construction of all facilities and appurtenances.

Annexor, at their sole cost and expense, must design and construct all wastewater collection facilities (whether on-site or off-site) that Springs Utilities, in its sole discretion, deems necessary to serve the Property. All facilities design and construction must be in accord Springs Utilities' specifications and must ensure development of an integrated wastewater system. The plans, specifications and construction of the wastewater facilities and appurtenances are each subject to Springs Utilities' inspection and written approval. No work shall commence on any facilities unless Springs Utilities approves, in writing, Annexor's wastewater construction plans and copies of the approved plans are received by Springs Utilities' Planning and Engineering Department. Annexor may only connect new facilities to the Springs Utilities existing wastewater system if the constructed facilities pass Springs Utilities' inspection and Springs Utilities, in its sole discretion, grants written acceptance of the constructed facilities.

Spring Utilities' Planning and Engineering Department shall make the final determination as to the size, location and the required appurtenances of the wastewater system facilities necessary to serve the Property. Springs Utilities may, in its sole discretion, require Annexor to design and construct wastewater facilities to serve areas outside of the Property. Accordingly, Springs Utilities may require that these facilities be larger than necessary for the Property alone in order to serve adjacent undeveloped land. Further, Springs Utilities may, in its sole discretion, require Annexor to participate in off-site wastewater facilities improvements that Springs Utilities, in its sole discretion, deems necessary to serve the Property now or in the future.

In consideration of the Springs Utilities' requirements, Annexor may be eligible for a recovery agreement to assist in the collection of a pro rata share of the facility costs from the owners of the adjacent lands at the time of their connection to the system and to refund those recoveries to the Annexor. Springs Utilities may approve the recovery agreement in accord with applicable City ordinances and Springs Utilities' tariffs. Any applicable recovery agreement charges and any applicable development charges shall be assessed at the time of each specific request for service.

As part of any development plan for the Property, Annexor must provide a Wastewater Master Facility Report to Springs Utilities. The Master Facility Report must show the location of all existing and proposed street cross-sections, wastewater mains, wastewater manholes and all other utility facilities.

In the event that permanent wastewater service is not available and the Property is determined by the Springs Utilities to be located within the Upper East Fork of Sand Creek Basin or the Jimmy Camp Creek Wastewater Service Area (JCC Area), then the Annexor shall execute an agreement with Springs Utilities for interim wastewater service prior to Springs Utilities' approval of any development plan. Additionally, annexor any and all owners of the Property shall be responsible for the cost of any new regional wastewater treatment facilities to serve the JCC Area and any necessary interceptors. Annexor acknowledges that an agreement for the guarantee of funds will be required for the Annexor's proportional share of costs for any new regional wastewater treatment facility and for necessary pipeline improvements to provide interim service.

E. Water and Non-potable Water Service Extensions by Annexor Annexor shall be responsible for extending and installing all potable water and non-potable water system facilities and appurtenances (including both on-site and off-site water main lines, service lines and pump stations) that Springs Utilities, in its sole discretion, deems necessary to serve the Property. The Annexor's responsibility for the costs and fees of engineering, materials and construction of all required system facilities and appurtenances shall be determined by the Springs Utilities' extension policy in effect at the time of construction.

Annexor must design and construct all potable and non-potable water facilities (whether on or off site) that Springs Utilities, in its sole discretion, deems necessary to serve the Property. All facilities design and construction must be in accord with Springs Utilities' Line Extension and Service Standards and specifications and must ensure development of an integrated water system. The plans, specifications and construction of water facilities and appurtenances are each subject to Springs Utilities' inspection and written acceptance. No work shall commence on any facilities unless Springs Utilities approves, in writing, Annexor's construction plans and copies of the approved plans are received by Springs Utilities'

Planning and Engineering Department. Annexor may only connect new facilities to the Springs Utilities existing water system if the constructed facilities pass Springs Utilities' inspection and Springs Utilities, in its sole discretion, grants written acceptance of the constructed facilities.

Springs Utilities' Planning and Engineering Department, in its sole discretion, shall make the final determination as to the size, location and the required appurtenances of the system facilities necessary to serve the Property. Springs Utilities may, in its sole discretion, require Annexor to design and construct system facilities to serve areas outside of the Property and to provide domestic, irrigation and fire protection for future needs. Accordingly, Springs Utilities may require that these facilities be larger than necessary to serve the Property itself. Further, Annexor acknowledges that Springs Utilities may require the Annexor to participate collectively with other development projects on a fair-share, pro rata basis in any off-site system facilities improvements necessary to serve the Property now or in the future.

In consideration of the Springs Utilities' requirements, Annexor may be eligible for a recovery agreement to assist in the collection of a pro rata share of the facility costs from the owners of the adjacent lands at the time of their connection to the system and to refund these recoveries to the Annexor. The recovery agreement shall be approved by Springs Utilities in accord with applicable City ordinances and Springs Utilities' tariffs. Any applicable recovery agreement charges and any applicable development charges shall be assessed at the time of each specific request for utility service.

Annexor acknowledges that a Water Facilities Master Plan will be required as part of any development plan submittal for the Property and must be approved by the Colorado Springs Fire Department and the Springs Utilities. The Water Facilities Master Plan must show the location of all existing and proposed water mains, fire hydrants, storm sewers, street cross sections and any other related structures. Further, the water distribution system facilities must meet the Springs Utilities' criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. The phasing of the construction of utilities and subdivision filings shall ensure that no more than fifty (50) homes are on a single water main line at any given time.

To ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by Springs Utilities' Planning and Engineering Department.

F. Limitation of Applicability The provisions of this Agreement set forth the requirements of the City and Springs Utilities in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or the Springs Utilities to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally. Subject to Article VII of this Agreement, the Springs Utilities' tariffs, policies and/or contract agreements (as modified from time to time) shall govern the use of all Utilities Services including, but not limited to, groundwater and non-potable water for irrigation use by the Annexor for the Annexor's exclusive use.

VII.
GROUNDWATER CONSENT

Annexor grants in perpetuity to the City, the sole and exclusive right to use any and all groundwater underlying or appurtenant to and used upon the Property. Annexor irrevocably consents, sells and conveys to the City, in perpetuity, on behalf of themselves and any and all heirs, assigns or successors in title, pursuant to C.R.S. § 37-90-137(4) as now existing or later amended, all rights to the withdrawal and use of all groundwater underlying the Property. The execution of this Agreement by Annexor shall constitute a conveyance of all groundwater rights to the City without the necessity of a separate deed. However, upon the City Council's approval of the annexation of the Property into the City, the Annexor, at the Annexor's expense, shall prepare and execute a deed or other instrument conveying to the City the right to any and all groundwater underlying or appurtenant to the Property. The City agrees that it shall

obtain any and all easements necessary before construction and operation of any well on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Annexor's Property without additional consent.

Any wells or groundwater developed by Annexor prior to annexation will be subject to Springs Utilities' groundwater tariffs, rules and regulations and standards. Annexor's uses of groundwater shall be subject to approval by the Springs Utilities and shall be consistent with the Springs Utilities standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future.

If determined necessary by the City Engineer and/or Springs Utilities, Annexor shall also construct facilities for the safe discharge of all sub-surface water into a drainage conveyance facility. Drainage conveyance facilities shall not be eligible for drainage basin credit or reimbursement.

**VIII.
PUBLIC LAND DEDICATION**

Annexor agrees that all land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be platted and all applicable development fee obligations paid.

Annexor agrees that any land dedicated or deeded to the City for municipal or utility purposes, including park and school sites, shall be free and clear of liens and encumbrances. All fees that would be applicable to the platting of land that is to be dedicated to the City (including park and school land) shall be paid by Annexor. Fees will be required on the gross acreage of land dedicated as of the date of the dedication in accord with the fee requirements in effect as of the date of the dedication. All dedications shall be platted by the Annexor prior to conveyance, unless otherwise waived by the City.

In addition, any property dedicated by deed shall be subject to the following:

- A. All property deeded to the City shall be conveyed by General Warranty Deed.
- B. Annexor shall convey the property to the City within 30 days of the City's written request.
- C. Any property conveyed to the City shall be free and clear of any liens and/or encumbrances.
- D. All property taxes levied against the property shall be paid by the Annexor through the date of conveyance to the City.
- E. An environmental assessment of the property must be provided to the City for review and approval, unless the City waives the requirement of an assessment. Approval or waiver of the assessment must be in writing and signed by an authorized representative or official of the City.

**IX.
FIRE PROTECTION**

The Annexor acknowledges that the Property is located within the boundaries of the Black Forest Fire Rescue Protection District (the "Fire District") and is subject to property taxes payable to the Fire District for its services. The Annexor further acknowledges that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire District until such time as the Property is excluded from the boundaries of the Fire District. After annexation of the Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire District unless and until the Property is excluded from the Fire District. After annexation, the Property will be assessed property taxes payable to both the City and the Fire District until such time as the Property is excluded from the boundaries of the Fire District.

The Annexor understands and acknowledges that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S., and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the City's request agrees to apply to the Fire District for exclusion of the Property from the Fire District. The Annexor understands and acknowledges that the Annexor, its heirs, assigns and successors in title are responsible for seeking any exclusion from the Fire District and that the City has no obligation to seek exclusion of any portion of the Property from the Fire District.

X.
FIRE PROTECTION FEE

The Annexor agrees to pay a fee of One Thousand Six Hundred Thirty-One Dollars (\$1,631) (Note: this is the 2012 fee) per gross acre of the entire Property or annexed area as Annexor's share of the capital cost of a new fire station and the initial apparatus purchase required to service this annexation as well as adjacent areas of future annexation. Fee payment for the gross acreage of each phase of development shall be made prior to issuance of the initial subdivision plat for that phase. When land purchase and construction of the Fire station and acquisition of the apparatus required to service this annexation is imminent, the City shall notify Annexor in writing that payment of the Fire Protection Fee required by this Agreement is due in full. Annexor shall have sixty (60) days to make arrangements to pay the Fire Protection Fees due on the remaining gross acreage of the annexed Property for which the fee has not previously been paid at platting. The fee shall be subject to a yearly escalation factor equal to the increase in the City of Colorado Springs Construction Index from the date of this Agreement. The City agrees as future annexations occur within the service area of the proposed fire station the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the fire station.

XI.
ORDINANCE COMPLIANCE

Annexor will comply with all tariffs, policies, rules, regulations, ordinances, resolutions and codes of the City which now exist or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different tariffs, policies, rules, regulations, ordinances, resolutions and codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

XII.
ASSIGNS AND DEED OF TRUST HOLDERS.

Where as used in this Agreement, the term the Annexor or Property Annexor, shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Annexor and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Annexor unless specifically assigned to another person.

By executing this Agreement, the deed of trust holder agrees that: (1) should it become owner of the property through foreclosure or otherwise that it will be bound by the terms and conditions of this Agreement to the same extent as Owner; and (2) should it become owner of the property, any provisions in its deed of trust or other agreements pertaining to the property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

**XIII.
RECORDING**

This Agreement shall be recorded with the Clerk and Recorder of El Paso County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Annexor and all other persons who may purchase land within the Property from the Annexor or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Annexor and not to subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

**XIV.
AMENDMENTS**

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City without the consent of any other party or its successors, transferees, or assigns so long as the amendment applies only to the property owned by the amending party, but with the concurrence of the financial institution. Should the financial institution no longer hold an interest in the property and an affidavit to that effect is filed with the City and the El Paso County Clerk and Recorder, its concurrence with any amendment will not be required. For the purposes of this section, an amendment shall be deemed to apply only to the property owned by the amending party if this Agreement remains in full force and effect as to the property owned by any non-amending party.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the Property subject to the amendment unless otherwise specified in the amendment.

**XV.
HEADINGS**

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgment of the language of the Agreement.

**XVI.
DEFAULT AND REMEDIES**

If either Annexor or City fails to perform any material obligation under this Agreement, and fails to cure the default within thirty (30) days following notice from the non-defaulting party of that breach, then a breach of this Agreement will be deemed to have occurred and the non-defaulting party will be entitled, at its election, to either cure the default and recover the cost thereof from the defaulting party, or pursue and obtain against the defaulting party an order for specific performance of the obligations under this Agreement and, in either instance, recover any actual damages incurred by the non-defaulting party as a result of that breach, including recovery of its costs and reasonable attorneys' fees incurred in the enforcement of this Agreement, as well as any other remedies provided by law.

**XVII.
GENERAL**

Except as specifically provided in this Agreement, City agrees to treat Annexor and the Property in a non-discriminatory manner relative to the rest of the City. In addition, any consent or approval required in accord with this agreement from the City shall not be unreasonably withheld, conditioned or delayed. City agrees not to impose any fee, levy or tax or impose any conditions upon the approval of development requests, platting, zoning or issuance of any building permits for the Property, or make any assessment on the Property that is not uniformly applied throughout the City, except as specifically provided in this Agreement or the City Code. If the annexation of the Property or any portion of the Property is

challenged by a referendum, all provisions of this Agreement, together with the duties and obligations of each party, shall be suspended, pending the outcome of the referendum election. If the referendum challenge to the annexation results in the disconnection of the Property from the City, then this Agreement and all its provisions shall be null and void and of no further effect. If the referendum challenge fails, then Annexor and City shall continue to be bound by all terms and provisions of this Agreement.

XIII.
SEVERABILITY

If any provision of this Agreement is for any reason and to any extent held to be invalid or unenforceable, then neither the remainder of the document nor the application of the provisions to other entities, persons or circumstances shall be affected.

XIX.
TERM

This Agreement shall be in force and effect for a period of twenty (20) years from its effective date or until all terms and conditions contained in this Agreement have been complied with, whichever occurs first. Thereafter, so long as the Property is located within the municipal boundaries of the City, it shall be subject to the uniform ordinances, rules and regulations of the City generally applicable throughout the City on a non-discriminatory basis. Upon the request of Annexor, the City agrees from time to time to provide a statement upon which Annexor or a purchaser of the Property can rely indicating whether there are any known defaults under this Agreement and whether there remain any obligations of Annexor for installation or maintenance of any public improvements or any payment thereof.

IN WITNESS WHEREOF, the parties set their hands and seals the day and year first written above.

CITY OF COLORADO SPRINGS

BY: _____
CITY COUNCIL PRESIDENT

ATTEST:

BY: _____
CITY CLERK

APPROVED AS TO FORM:

BY: _____
CITY ATTORNEY

PROPERTY ANNEXOR:

CUMBRE VISTA, LLC, a Colorado limited liability company ("Annexor").

a Colorado limited liability company

By: _____
Brain Bahr, Manager

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2012, by _____, as Manager of Bahr Holdings, LLC, a Colorado limited liability company.

Witness my hand and notarial seal.

My commission expires: _____

Notary Public
Address:

DEED OF TRUST HOLDER:

(Company)

(?? Company)

By: _____
(?? _____)

ACKNOWLEDGMENT

STATE OF COLORADO)
) ss.
COUNTY OF EL PASO)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____, as Manager of _____.

Witness my hand and notarial seal.

My commission expires: _____

Notary Public
Address:

EXHIBIT A
LEGAL DESCRIPTION OF THE PROPERTY

ANNEXATION PETITION RATIFICATION

POWERWOOD NO.7 ADDITION ANNEXATION

Cumbre Vista, LLC ("Owner") is the owner of property legally described on Exhibit "A", ("the Property") attached to and made a part of this Annexation Petition Ratification The Property was approved for annexation into the City of Colorado Springs in accordance with City Ordinance No. 06-164 by the Colorado Springs City Council on September 26, 2006. However, the Powerwood No.7 Addition Annexation ordinance, plat and annexation agreement were never recorded. Subsequently the above noted Owners have acquired the Property and now desire that the Annexation approval ordinance, plat and agreement be recorded and the Annexation completed.

Said Owners hereby consents to and agrees to the Annexation of the Property and specifically ratifies the Powerwood No.7 Addition Annexation Petition accepted by City Council on September 15, 2005.

WITNESS:

By: Cumbre Vista, LLC

Name: Brian Bahr

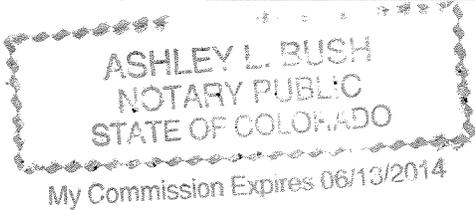
Title: Manager

Signature: *Brian R. Bahr*

STATE OF Colorado)
COUNTY OF El Paso) ss

The foregoing instrument was acknowledged before me this 16th day of April, 2013 by Brian R. Bahr as manager of Cumbre Vista, LLC.

Witness my hand and seal.
My commission expires: _____



Ashley L. Bush

Draft 3/10/08

**NORTHGATE ESTATES ADDITION NO.2
ANNEXATION AGREEMENT**

THIS ANNEXATION AGREEMENT, dated this _____ day of _____, 2008, is between the City of Colorado Springs, a home rule city and Colorado municipal corporation ("City"), and Bahr Holdings, LLC ("Owners" or "Property Owners").

I.
INTRODUCTION

The Owners own all of the real property located in El Paso County, Colorado, identified and described on the legal description attached as Exhibit A, commonly known as Northgate Estates Addition No. 2 (the "Property").

The growth of the Colorado Springs metropolitan area makes it likely that the Property will experience development in the future. Both City and Owners wish to annex the Property into the City to ensure its orderly development. In consideration of the mutual covenants contained in this Agreement, the receipt and sufficiency of which is acknowledged by each of the parties, the City and Owners agree as follows.

II.
ANNEXATION

The Owners have petitioned the City for annexation of the Property as set forth in Exhibit A. The annexation will become effective upon final approval by the City Council and the recording of the annexation plat and annexation ordinance with the El Paso County Clerk and Recorder.

All references to the Property or to the Owners' Property are to the Property described in Exhibit A except as otherwise indicated.

III.
LAND USE

A Development Plan for the Property has been proposed and submitted to the City for approval. The City will permit the development of the Property in accordance with the Approved Development Plan as it may be amended from time to time in accordance with applicable provisions of the Code of the City of Colorado Springs 2001, as amended or recodified ("City Code").

The vesting of the development in accordance with the approved Development Plan, and the final land use intensities and densities for specific parcels, shall be determined in conjunction with the review and approval of development plans per Section 7.5.502; 503; 504 and 505 of the City Code.

IV. ZONING

A. Zoning. The Planning Department of the City agrees to recommend that the initial zone for the Owners' Property shall be Office Commercial with Conditions of Record(OC/CR) upon annexation. Owners acknowledge and understand that the City Council determines what is an appropriate zone for the Property, and this recommendation does not bind the Planning Commission or City Council to adopt an OC/CR zone for the Property.

B. Rezoning. Rezoning shall conform to the Plan, as approved or as amended by the City in the future. Rezoning in accord with the zones reflected on the Plan will occur prior to actual development of the site.

V. PUBLIC FACILITIES

A. Streets. Owners agree to construct at their expense, necessary improvements adjacent to or within the Property at the time of development or when the City determines the installation of full improvements is necessary. The improvements shall include those improvements required under the provisions of the City Subdivision Ordinance, Chapter 7 of the City Code. These improvements shall also include the dedication of right of way where necessary, and extension of streets and right of way as necessary. The provisions of City Code 7.7.706 (Arterial Streets) and 7.7.1001 - 1006, (Arterial Bridges) of the City Code are excluded. City participation or reimbursement for Arterial Streets and Arterial Bridges will not be allowed.

B. Off-Site Transportation Improvement Fee. The Owners acknowledge that certain area wide public improvements will benefit the Property. Accordingly, the Owners shall participate in the cost of certain area wide off-site public improvements by paying an off-site transportation improvement platting fee (the "Off-Site Transportation Improvement Fee"). The Owners hereby agree to pay the Off-Site Transportation Improvement Fee at the time of platting property within the Property. This fee will not be collected on land identified as Open Space on the approved master plan. The Off-Site Transportation Improvement Fee will be calculated as follows: \$10,206.00 per acre as of 2008, subject to a yearly escalation factor equal

to the increase in the Colorado Springs Construction Index. The fee will be collected and administered by the City, and used all or in part for any transportation improvement project, which in the City's reasonable discretion, benefits regional transportation infrastructure.

C. Traffic Control Devices and Street Lights. Owners shall pay for installation of street signs and traffic control devices, permanent barriers, and street lights for all streets within or contiguous to the Property as determined necessary by the City in accordance with uniformly applied criteria. Streetlights will be required in all residential areas at the time of utility distribution system installation and on collector and arterial roadways as determined by Colorado Springs Utilities regulations. Streetlights will be required on collector and larger streets or at intersections for public safety as determined necessary by the City pursuant to traffic studies to be prepared in connection with development of the Property and generally applicable regulations of the City. Traffic signals will be required at a specific intersection, only after the intersection meets at least one of the warrants as outlined in the Manual on Uniform Traffic Control Devices in use at the time or other nationally accepted standard and only if the City is utilizing those standards for installation of traffic signals throughout the City. Once the intersection meets the criteria, City will notify Owners in writing and Owners will commence installation of the traffic signal within one hundred twenty (120) days after receiving the notice, and shall diligently pursue completion thereafter. Owners will be responsible for all components of the signal, except the City will supply the controller equipment and cabinet to be reimbursed by Owners.

D. Drainage. A Master Development Drainage Plan shall be prepared and submitted by the Owners to the City and approved by the City Engineer, prior to recording the annexation plat. Owners shall be responsible for construction, at their expense, of all drainage improvements included in any approved drainage plans. The Owners shall comply with all drainage criteria, standards, policies and ordinances in effect at the time, including the payment of any drainage, arterial bridge and detention pond fees and the reimbursement for drainage facilities constructed. Owners shall be responsible for conformance with the Drainage Basin Planning Study for the Monument Branch Basin. Owners shall provide multi-staged detention of developed stormwater in accord with the requirements of the City Engineer.

E. Cost Recovery. Owner shall participate in a Cost Recovery for Construction of Public Improvements relating to construction of North Gate Boulevard adjacent to the annexed property. The current (2008) amount of recovery owed is \$62,125 and is subject to an annual increase of 10%. This recovery shall be paid prior to recordation of this annexation agreement. (City Code section 7.7.705.C,)

VI.
UTILITIES

UTILITY SERVICES

A. Colorado Springs Utilities' (Springs Utilities) Services: Springs Utilities' water, non-potable water, wastewater, electric, streetlight, and gas services ("Utility Service" or together as "Utility Services") are available to eligible customers upon connection to the Springs Utilities' facilities or utility systems on a "first-come, first-served" basis, provided that (among other things) the City and Springs Utilities determine that the applicant meets all applicable City ordinances and regulations, and applicable Springs Utilities' tariff requirements and regulations for each application for Utility Service. In addition, the availability of Utility Services is contingent upon the terms detailed herein and the dedication of public rights-of-way, private rights-of-way, or easements that Springs Utilities determines are required for the extension of any proposed Utility Service from the Springs Utilities' system facilities that currently exist or that may exist at the time of the proposed extension.

Owners shall ensure that the connection and/or extension of Utility Services to the Property are in accord with all codes and regulations, Springs Utilities' tariffs, rules, and policies, City ordinances, resolutions, and policies, and Pikes Peak Regional Building Department codes, in effect at the time of Utility Service connection and/or extension. Further, as specified herein below, Owners acknowledge responsibility for the costs of any extensions or utility system improvements that are necessary to provide Utility Services to the Property or to ensure timely development of integrated utility systems serving the Property and areas outside the Property as determined by Springs Utilities.

Springs Utilities' connection requirements may require the Owners to provide a bond(s), or to execute a Revenue Guarantee Contract or other Springs Utilities-approved guarantee for the extension of any Utility Service before Springs Utilities authorizes the extension of Utility Services and/or other utility systems improvements, and/or any request for service connection to the Property by Owners. Owners acknowledge that such connection requirements shall include Owners' payment of all applicable development charges, recovery-agreement charges, advance recovery-agreement charges, aid-to-construction charges and other fees or charges applicable to the requested Utility Service, and any costs Springs Utilities incurs to acquire additional service territory for the Utility Service to be provided, including those costs specified in paragraph C below. Because recovery agreement charges, advance recovery-agreement charges, and aid-to-construction charges may vary over time and by location, Owners are responsible for contacting Springs Utilities' Customer Contract Administration at (719) 668-8111

to ascertain which fees or charges apply to the Property.

Owners acknowledge that annexation of the Property does not imply a guarantee of water supply, wastewater treatment system capacity, or any other Utility Service supply or capacity, and Springs Utilities does not guarantee Utility Service to the Property until such time as permanent service is initiated. Accordingly, no specific allocations or amounts of Utility Services, facilities, capacities or supplies are reserved for the Property or Owners upon annexation, and the City and Springs Utilities make no commitments as to the availability of any Utility Service at any time in the future.

B. Dedications and Easements: Owners, at Owners' sole cost and expense, shall dedicate by plat and/or convey by recorded document, all property (real and personal) and easements that Springs Utilities, in its sole discretion, determines are required for all utility-system facilities necessary to serve the Property or to ensure development of an integrated utility system, including but not limited to, any access roads, gas regulation or electric substation sites, electric transmission and distribution facilities, water storage reservoir/facility sites, and wastewater or water pump station sites. Springs Utilities, in its sole discretion, shall determine the location and size of all property necessary to be dedicated or otherwise conveyed.

Owners shall provide Springs Utilities all written, executed conveyances prior to platting or prior to the development of the Property as determined by Springs Utilities in its sole discretion. Owners shall pay all fees and costs applicable to and/or associated with the platting of the real property to be dedicated to the City, and all fees and costs associated with the conveyance of real property interests by plat or by separate instrument, including but not limited to, Phase 1 and Phase 2 environmental assessments, 'closing' costs, title policy fees, and recording fees for any deeds, permanent or temporary easement documents, or other required documents. Dedicated and/or deeded properties and easements are not, and shall not be, subject to refund or reimbursement and shall be deeded or dedicated to the City free and clear of any liens or encumbrances, with good and marketable title and otherwise in compliance with City Code § 7.7.1802.

Further, all dedications and conveyances of real property must comply with the City Code, the City Charter, and any applicable Springs Utilities' policies and procedures, and shall be subject to Springs Utilities' environmental review. Neither the City nor Springs Utilities has any obligation to accept any real property interests. All easements by separate instrument shall be conveyed using the Springs Utilities' then-current Permanent Easement Agreement form without modification.

If Owners, with prior written approval by Springs Utilities, relocate, require relocation, or alter any existing utility facilities within the Property, then the relocation

or alteration of these facilities shall be at the Owners' sole cost and expense. If Springs Utilities, in its sole discretion, determines that Owners' relocation or alteration requires new or updated easements, Owners shall convey those easements prior to relocating or altering the existing utility facilities using Springs Utilities' then-current Permanent Easement Agreement form without modification. Springs Utilities will only relocate existing gas or electric facilities during time frames and in a manner that Springs Utilities determines will minimize outages and loss of service.

C. Extension of Utility Facilities by Springs Utilities: Subject to the provisions of this Article VI, including sections A and B above, and all applicable Springs Utilities' tariffs, rules, regulations, and standards, Springs Utilities will extend electric and gas service to the Property if Springs Utilities, in its sole discretion, determines that there will be no adverse effect to any Utility Service or utility easement. Owners shall cooperate with Springs Utilities to ensure that any extension of gas or electric facilities to serve the Property must be in accord with the Springs Utilities Line Extension and Service Standards.

1. Natural Gas Facilities: If prior to annexation any portion of the Property is located outside Springs Utilities' gas service territory, then upon annexation, Springs Utilities will acquire the gas service territory within the Property from the then-current gas service provider. Accordingly, Owners shall be solely responsible for all costs and expenses, including but not limited to attorneys' fees, that Springs Utilities incurs due to any Colorado Public Utilities Commission ("CPUC") filings made or arising from annexation of the Property. Owners shall support and make any CPUC filings necessary to support Springs Utilities' filings to the CPUC.
2. Electric Facilities: Springs Utilities, in its sole discretion, may require Owners to enter into a Revenue Guarantee Contract for the extension of any electric service or facilities, including any necessary electric transmission or substation facilities. If any portion of the Property is located outside Springs Utilities' electric service territory, then upon annexation, Springs Utilities will acquire the electric service territory within the Property that is not served by Springs Utilities from the then-current electric service provider in accord with C.R.S. §§ 40-9.5-201 *et seq.*, or 31-15-707, and Owners shall be solely responsible for all costs and fees, including but not limited to attorneys' fees, that Springs Utilities incurs as a result of or associated with the acquisition of such electric service territory. Accordingly, Owners agree to pay the then-current electric service provider, directly, for the costs associated with Springs Utilities' acquisition of the electric service territory as specified in C.R.S. §§ 40-9.5-204 (1)(a) and 40-9.5-204 (1)(b) within 30 days of receipt of an invoice for such costs. Owners also agree to pay Springs Utilities for the costs associated with Springs Utilities' acquisition of the

electric service territory as specified in C.R.S. §§ 40-9.5-204 (1)(c) and 40-9.5-204 (1)(d) within 30 days of receipt of an invoice for such costs.

Further, Owners acknowledge sole responsibility for the costs that Springs Utilities incurs in the conversion of any overhead electric lines to underground service and the removal of any existing electric distribution facilities (overhead or underground) that were previously installed by the then-current electric service provider. These costs shall be paid by Owners concurrent with the execution of a contract between the Owners and Springs Utilities that obligates Owners to reimburse Springs Utilities for such conversion or removal of existing electrical facilities.

3. Water and Wastewater Facilities by Springs Utilities: The Owners shall pay any advance recovery-agreement charges, or other fees or charges which are not currently approved by Springs Utilities for the Property, that are applicable to any water or wastewater system facilities, whether on-site or off-site, that Springs Utilities or other developers may design and construct in order to ensure an integrated water or wastewater system supplying the Property. Additionally, the Owners shall be subject to cost recovery for the engineering, materials and installation costs incurred by Springs Utilities in its design, construction, upgrade or improvement of any water pump stations, water suction storage facilities, water transmission and distribution pipelines, or other water system facilities and appurtenances and any wastewater pump stations or treatment facilities, wastewater pipeline facilities, or other wastewater collection facilities and appurtenances that Springs Utilities, in its sole discretion, determines are necessary to serve the Property.

D. Water and Wastewater System Extensions by Owners: Owners must extend, design, and construct all potable and non-potable water system facilities and appurtenances, and all wastewater collection system facilities, wastewater pump stations, and any water or wastewater service lines to and within the Property at Owners' sole cost and expense in accord with all applicable Springs Utilities' tariffs, rules, regulations, including Springs Utilities' Line Extension and Service Standards, and all City ordinances and regulations in effect at the time of each specific request for water or wastewater service. Consistent with City Code 7.7.1102 (B), Owners shall complete the design, installation and obtain preliminary acceptance of such utility facilities prior to Springs Utilities' approval of Owners' water and wastewater service requests.

Owners shall be solely responsible for all costs and fees associated with engineering, materials, and installation of all water system facilities and appurtenances, and all wastewater collection facilities and appurtenances, whether on-site or off-site, that are necessary to serve the Property or to ensure

development of an integrated water or wastewater system serving the Property and areas outside the Property as determined by Springs Utilities. Further, Owners acknowledge that Springs Utilities may require that such water or wastewater system facilities be larger than necessary to serve the Property itself, and may require the Owners to participate with other development projects on a fair-share, pro rata basis in any necessary off-site system facilities improvements.

The plans, specifications and construction of the water facilities and appurtenances, and the wastewater facilities and appurtenances are each subject to Springs Utilities' inspection and written acceptance, and Springs Utilities shall make the final determination as to the size, location, point(s) of connection and the required appurtenances of the system facilities to be constructed. No work shall commence on any proposed water or wastewater extension facilities until Springs Utilities provides written approval of Owners' water or wastewater construction plans and copies of such approved plans are received by Springs Utilities' Planning and Engineering Department. Owners may only connect newly-constructed facilities to the Springs Utilities existing water or wastewater system upon Springs Utilities' inspection and written acceptance of such facilities.

As part of any development plan submittal for the Property, Owners acknowledge that a Water Services Master Plan and/or a Wastewater Master Facility Report will be required and must be approved by Springs Utilities.

- The Wastewater Master Facility Report must show the location of all existing and proposed wastewater mains, wastewater manholes, storm sewers, street cross-sections, and all other existing and proposed utility facilities.
- The Water Services Master Plan must show the location of all existing and proposed water mains, fire hydrants, storm sewers, street cross-sections, any other related structures and all other existing and proposed utility facilities.

The water distribution system facilities must meet the Springs Utilities' criteria for quality, reliability and pressure. The water distribution system shall ensure capacity, pressure and system reliability for both partially completed and fully completed conditions and the static pressure of the water distribution system shall be a minimum of 60 psi. The phasing of the construction of utilities and subdivision filings shall ensure that no more than fifty (50) homes are on a single water main line at any given time. Also, to ensure the protection of public health and to maintain compliance with state regulatory requirements, the detailed plans for all customer-owned, non-potable water distribution systems, including irrigation systems, must be approved by Springs Utilities.

Further, Owners recognize that the extension of water system facilities may affect the quality of water in Springs Utilities' water system. Consequently, Owners acknowledge responsibility for any costs that Springs Utilities, in its sole discretion,

determines necessary to incur in order to maintain water quality in its system as a result of Owners' water system extensions, including but not limited to, the cost of any lost water, materials and labor from pipeline-flushing maintenance activities, temporary pipeline loop extensions, or other appurtenances and measures that Springs Utilities determines are necessary to minimize pipeline flushing and to maintain water quality (Water-quality Maintenance Costs). Owners shall reimburse Springs Utilities for such Water-quality Maintenance Costs within thirty (30) days of receipt of an invoice for such costs.

E. Limitation of Applicability: The provisions of this Agreement set forth the requirements of the City and Springs Utilities in effect at the time of the annexation of the Property. These provisions shall not be construed as a limitation upon the authority of the City or the Springs Utilities to adopt different ordinances, rules, regulations, resolutions, policies or codes which change any of the provisions set forth in this Agreement so long as these apply to the City generally and are in accord with the then-current tariffs, rates, regulations and policies of Spring Utilities. Subject to Article VII "Groundwater Consent" of this Agreement, the Springs Utilities' tariffs, policies, and/or contract agreements, as may be modified from time to time, shall govern the use of all Utilities Services, including but not limited to, groundwater and non-potable water for irrigation use by the Owners for the Owners' exclusive use.

GROUNDWATER CONSENT

Owners grant in perpetuity to the City, the sole and exclusive right to use any and all groundwater underlying or appurtenant to and used upon the Property. Owners irrevocably consent, sell and convey to the City, in perpetuity, on behalf of Owners and any and all successors in title, pursuant to C.R.S. § 37-90-137(4) as now exists or is later amended, all rights to the withdrawal and use of all groundwater underlying the Property. The execution of this Agreement shall constitute a conveyance of all groundwater rights to the City without the necessity of a separate deed. However, upon the City Council's approval of the annexation of the Property into the City, the Owners, at the Owners' expense, shall prepare and execute (within one hundred eighty (180) days of such City Council approval) a deed or other instrument conveying to the City the right to any and all groundwater underlying or appurtenant to the Property. The City agrees that it shall obtain any and all easements necessary before construction and operation of any well on the Property. Wells constructed by the City outside the Property may withdraw groundwater under Owners' Property without additional consent.

Upon annexation of the Property, any wells or groundwater developed by Owners prior to annexation will become subject to Springs Utilities' groundwater tariffs,

Rules and Regulations, and groundwater rates as amended in the future. Owners' uses of groundwater shall be subject to approval by the City and Springs Utilities, and shall be consistent with the Springs Utilities standards, tariffs, policies, and the City's ordinances, resolutions and policies for the use of groundwater now in effect or as amended in the future.

If determined necessary by the City Engineer and/or Springs Utilities, Owners shall also construct facilities for the safe discharge of all sub-surface water into a drainage conveyance facility at Owners' sole cost and expense and in accord with and all applicable Springs Utilities' tariffs, rules, regulations, Line Extension and Service Standards, and all City ordinances and regulations. Drainage conveyance facilities shall not be eligible for drainage basin credit or reimbursement.

VIII.

PUBLIC LAND DEDICATION

Owners agree that all land dedicated or deeded to the City for municipal or utility purposes (including park and school sites) shall be free and clear of liens and encumbrances.

IX.

COMPLIANCE WITH ORDINANCE

Owners will comply with all ordinances, codes, resolutions, rules, regulations or policies of the City which now exists or are amended or adopted in the future, including those related to the subdivision and zoning of land, except as expressly modified by this Agreement. This Agreement shall not be construed as a limitation upon the authority of the City to adopt different ordinances, codes, resolutions, rules, regulations or policies which change any of the provisions set forth in this Agreement so long as these apply to the City generally.

X.

FIRE PROTECTION

A. Donald Wescott Fire Protection District. The Owners acknowledge that the Property is located within the boundaries of the Donald Wescott Fire Protection District (the "Fire District") and is subject to property taxes payable to the Fire District for its services. The Owners further acknowledge that, after annexation of the Property to the City, the Property will continue to remain within the boundaries of the Fire District until such time as the Property is excluded from the boundaries of the Fire District. After annexation of Property to the City, fire protection services will be provided by the City through its Fire Department and by the Fire District unless and until the Property is excluded from the Fire District. After annexation, the Property will be assessed property taxes payable to both the City and the Fire

District until such time as the Property is excluded from the boundaries of the Fire District.

The Owners understand and acknowledge that the Property may be excluded from the boundaries of the Fire District under the provisions applicable to special districts, Article 1 of Title 32 C.R.S. and as otherwise provided by law. Upon request by the City, the person who owns the Property at the time of the request agrees to apply to the Fire District for exclusion of the Property from the Fire District.

B. Contribution for Fire Station. The City agrees that the contribution by the Owners to the cost of construction of a fire station referenced in Section 12 of the Amended and Restated Northgate Annexation Agreement, dated June 9, 1998 ("Northgate Agreement") shall be a fair and equitable share of the actual cost of such construction, but in any event not more than \$789.00 per gross acre of the Property. This contribution shall be paid at time of annexation.

XII.

POLICE SERVICE FEE

The Owners agree to pay a fee of \$677.00 per gross acre of the entire annexed area as Owners' share of the capital cost of a new police station and the initial equipment purchase required to service this annexation as well as adjacent areas of future annexations. This contribution shall be paid at time of annexation. When land purchase and construction of the police station and acquisition of the equipment required to service this annexation is imminent, the City shall notify Owners in writing that payment of the Police Service Fee required by this Agreement is due in full. Owners shall have 60 days to make arrangements to pay the Police Service Fees due on the remaining gross acreage of the annexed Property for which the fee has not previously been paid at platting. The City agrees as future annexations occur within the service area of the proposed police station the owners of future annexations will be required to pay a per-acre fee to the City for the capital improvements to the police station.

XIII.

ASSIGNS AND DEED OF TRUST HOLDERS

Where as used in this Agreement, the term "the Owners" or "Property Owners," shall also mean any of the heirs, executors, personal representatives, transferees, or assigns of the Owners and all these parties shall have the right to enforce and be enforced under the terms of this Agreement as if they were the original parties hereto. Rights to specific refunds or payments contained in this Agreement shall always be to the Owners unless specifically assigned to another person.

By executing this Agreement, the financial institution or deed of trust holder agrees that: (1) should it become owner of the property through foreclosure or otherwise that it will be bound by the terms and conditions of this Agreement to the same extent as Owners; and (2) should it become owner of the property, any provisions in its deed of trust or other agreements pertaining to the property in conflict with this Agreement shall be subordinate to and superseded by the provisions of this Agreement.

Notwithstanding any contrary provisions of this Agreement, a deed of trust holder (including a deed of trust holder who obtains title to all or part of the Property as a result of foreclosure proceedings, or deed in lieu thereof) will not be obligated by this Agreement to construct or complete the improvements, or any of them, or to guarantee the construction or completion of the improvements unless the deed of trust holder actively seeks to develop all or any part of the Property. Any other party who later obtains title to all or any part of the Property from or through the deed of trust holder will be obligated to the full extent that owner would be obligated but for the foreclosure. A deed of trust holder and any other persons specified above and their successors in interest may, at their option, choose to construct the improvements required under this Agreement.

If the City delivers to Owners a demand or notice of any claimed default by Owners under this Agreement, the City will at the same time transmit a copy of the demand or notice to each deed of trust holder at the last address of the holder shown in the City's records. Any deed of trust holder will have the right, at its option, to cure or remedy or to commence to cure or remedy any claimed default (to the extent that it relates to the part of the Property covered by its deed of trust) within thirty (30) days after receiving notice of the alleged default. Nothing contained in this Agreement will be deemed to permit or authorize a deed of trust holder to undertake or continue the construction of improvements, except to the extent the holder reasonably deems the construction necessary to conserve or protect the improvements or construction already made, without first having expressly assumed Owner's obligations with respect to the portion of the Property which holder elects to construct by written agreement reasonably satisfactory to the City. In that event, the deed of trust holder must agree to complete the portion of the improvements which the holder has elected to construct, in the manner provided in this Agreement, and submit evidence satisfactory to the City that it has the qualifications and financial responsibility necessary to perform the obligations.

XIV. RECORDING

This Agreement shall be recorded with the Clerk and Recorder of El Paso

County, Colorado, and constitute a covenant running with the land. This Agreement shall be binding on future assigns of the Owners and all other persons who may purchase the Property or any portion thereof from the Owners or any persons later acquiring an interest in the Property. Any refunds made under the terms of this Agreement shall be made to the Owners and not subsequent purchasers or assigns of the Property unless the purchase or assignment specifically provides for payment to the purchaser or assignee and a copy of that document is filed with the City.

XV.
AMENDMENTS

This Agreement may be amended by any party, including their respective successors, transferees, or assigns, and the City without the consent of any other party or its successors, transferees, or assigns so long as such amendment applies only to the property owned by the amending party. For the purposes of this article, such amendment shall be deemed to apply only to property owned by the amending party if this Agreement remains in full force and effect as to property owned by any non-amending party.

Any amendment shall be recorded in the records of El Paso County, shall be a covenant running with the land, and shall be binding on all persons or entities presently possessing or later acquiring an interest in the property subject to the amendment unless otherwise specified in the amendment."

XVI.
HEADINGS

The headings set forth in the Agreement for the different sections of the Agreement are for reference only and shall not be construed as an enlargement or abridgement of the language of the Agreement.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first written above.

CITY OF COLORADO SPRINGS

BY: _____
MAYOR

ATTEST:

CITY CLERK

APPROVED AS TO FORM:

CITY ATTORNEY

TO: Larry Larsen, Senior Planner
FROM: Nina Vetter, Senior Analyst
DATE: December 18, 2013
SUBJECT: Powerwood No.7 Annexation - Fiscal Impact Analysis

A copy of the fiscal impact analysis for the Powerwood No. 7 is attached. At the request of the Planning Department, the Budget Office prepared a fiscal impact analysis estimating the City General Fund and Public Safety Sales Tax (PSST) Fund revenue and expenditures attributable to the Powerwood No. 7 development for the period 2014-2023.

The fiscal review criteria of the City Code states city costs related to infrastructure and service levels shall be determined for a ten-year time horizon for only the appropriate municipal funds.

The methodology used for the fiscal impact analysis is a case study approach, where a mini-budget process is undertaken in which City units are asked to project the increased marginal cost of providing services to the development for 2014-2023. The Budget Office estimates the city revenue, as outlined in the Revenue Notes, stemming from the development.

The Annexation Agreement, drafted in 2006, provides for specific project-related fees for the Tutt Boulevard Bridge over Cottonwood Creek, Cottonwood Creek Bridge Fee, Parks Land Dedication, and a Fire Station. The specific project related revenue is not included in the FIA itself, but stated at the end of the Revenue Notes for informational purposes.

Most departments indicated that there were no identifiable marginal costs of providing services to this development, as the area is currently being serviced by public safety agencies, and the surrounding infrastructure and roadways are already being maintained by the City as they fall within the service area of surrounding parcels. The Fire Department identified marginal increases in operation costs of ~\$145-\$174 annually.

The result of the fiscal impact analysis is a positive cumulative cashflow for the City during the 10-year timeframe.

The Summary of Expenditures and Revenues is attached. Also, the Expenditure and Revenue Notes are attached that provide the methodology for calculating the expenditures and revenues.

GENERAL FUND FISCAL IMPACT ANALYSIS
SUMMARY OF EXPENDITURES AND REVENUE FOR POWERWOOD NO. 2

	Projected 2014	Projected 2015	Projected 2016	Projected 2017	Projected 2018	Projected 2019	Projected 2020	Projected 2021	Projected 2022	Projected 2023
EXPENDITURES										
<u>Total Salaries, Operating, and Capital Outlay</u>										
Police	0	0	0	0	0	0	0	0	0	0
Fire	145	148	151	155	158	161	164	168	171	174
Public Works - Streets	0	0	0	0	0	0	0	0	0	0
Public Works - Transportation Engineering	0	0	0	0	0	0	0	0	0	0
Public Works - City Engineering	0	0	0	0	0	0	0	0	0	0
Public Works - Transit	0	0	0	0	0	0	0	0	0	0
Parks, Recreation and Cultural Services	0	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	145	148	151	155	158	161	164	168	171	174
REVENUES										
Property Taxes	0	0	1,022	2,074	3,158	4,275	5,221	5,377	5,539	5,705
Specific Ownership Taxes	0	0	120	243	370	500	611	629	648	667
Road & Bridge Revenue	0	0	39	80	122	165	201	207	213	220
Sales Tax Revenue (Residential Uses)	0	1,666	3,382	5,150	6,971	8,513	8,768	9,032	9,302	9,582
Sales and Use Tax Revenue (Building Materials)	24,000	24,000	24,000	24,000	19,200	0	0	0	0	0
Miscellaneous Revenue	0	8,192	16,385	25,314	34,765	42,969	44,258	45,586	46,954	48,362
General Fund Sub-Total	24,000	33,859	44,948	56,861	64,585	56,422	59,059	60,831	62,656	64,536
<u>Public Safety/Sales Tax Fund</u>										
Sales Tax Revenue (Residential Uses)	0	333	676	1,030	1,394	1,703	1,754	1,806	1,860	1,916
Sales and Use Tax Revenue (Building Materials)	4,800	4,800	4,800	4,800	3,840	0	0	0	0	0
Public Safety Sales Tax Fund Sub-Total	4,800	5,133	5,476	5,830	5,234	1,703	1,754	1,806	1,860	1,916
TOTAL REVENUE	28,800	38,992	50,424	62,691	69,819	58,125	60,813	62,637	64,516	66,452
REVENUE SURPLUS/DEFICIT										
(Total Rev. less Total Exp.)										
ANNUAL	28,655	38,844	50,273	62,536	69,661	57,964	60,649	62,469	64,345	66,278
CUMULATIVE	28,655	67,499	117,772	180,308	249,969	307,933	368,582	431,051	495,396	561,674

REVENUE NOTES**Powerwood No. 7 Annexation****General Fund/Public Safety Sales Tax Fund Fiscal Impact Analysis, 2014-2023****General Fund****PROPERTY TAX:**

It is assumed property taxes will be collected in the year 2016 based upon beginning construction in 2014 because of the time lag associated with placing assessed value onto the assessment rolls. The 2016 revenue is calculated by multiplying the City mill levy of 4.279 mills by the projected increase in City assessed valuation resulting from the proposed development. This assumes there is no change in the residential assessment ratio of 7.96%. The cumulative assessed valuation includes a 3% annual increase in market values.

SPECIFIC OWNERSHIP TAX:

The Specific Ownership Tax revenue is calculated at 11.70% of property tax revenues. This is based on the 2012 actual City specific ownership tax revenues as a percent of property tax revenue.

ROAD & BRIDGE REVENUE:

The Road & Bridge Revenue is calculated at 3.85% of the property tax revenues. This is based on the 2012 actual City road & bridge revenues as a percent of property tax revenue.

SALES AND USE TAX:

The revenue calculation assumes the existing General Fund tax rate and existing collection practices. Projections include sales tax revenue from the personal consumption by the population projected to reside in Powerwood No. 7 and the sale of building materials used in the projected construction of the households and commercial space in the development.

The Sales Tax Revenue for Residential Uses is calculated by determining the average household income per unit and the percentage of income spent on taxable consumption. The average household income per unit is calculated based upon an "affordability" calculation, which assumes 10% down, 30-year mortgage @ 4%, and a 28% income/Principal and Interest ratio. The percentage of income spent on taxable consumption is 33.2%, which is an estimate from the U.S. Department of Commerce Consumer Expenditure Surveys. It also assumes that 75% of consumption by the new residents will be within the City and that 60% of the consumption by these residents is new to the City (in other words, 60% of residents moved from outside City limits). Also, it assumes there is a one-year construction/revenue collection lag. Projections include a 3% annual increase for inflation.

The Sales Tax Revenue for Building Materials is calculated based on sales taxable materials at 40% of the value of residential property.

MISCELLANEOUS REVENUE:

The Miscellaneous Revenue is based on per capita multipliers for the following categories: Admissions Tax; State Cigarette Tax; HUTF; Charges for Services; Fines and Forfeits, Utilities Surplus, as these revenues are impacted by a change in population. Revenues were calculated using direct and per capita multiplier approaches. The Miscellaneous Revenue includes a 3% annual increase. Also, it assumes there is a one-year construction/revenue collection lag.

Public Safety Tax Fund

SALES AND USE TAX:

The revenue calculation assumes the existing PSST rate and existing collection practices. Projections include sales tax revenue from the personal consumption by the population projected to reside in Powerwood No. 7 and the sale of building materials used in the projected construction of the households and commercial space in the development.

The Sales Tax Revenue for Residential Uses is calculated by determining the average household income per unit and the percentage of income spent on taxable consumption. The average household income per unit is calculated based upon an “affordability” calculation, which assumes 10% down, 30-year mortgage @ 4%, and a 28% income/Principal and Interest ratio. The percentage of income spent on taxable consumption is 33.2%, which is an estimate from the U.S. Department of Commerce Consumer Expenditure Surveys. It also assumes that 75% of consumption by the residents will be within the City and that 60% of the consumption by these residents is new to the City (in other words, 60% of residents moved from outside City limits). Also, it assumes there is a one-year construction/revenue collection lag. Projections include a 3% annual increase for inflation.

The Sales Tax Revenue for Building Materials is calculated based on sales taxable materials at 40% of the value of residential property.

Additional Annexation Agreement Items Not Included in FIA

Annexation Fee	\$ Amount	Recipient
Tutt Boulevard Bridge over Cottonwood Creek	\$32,086	City Escrows
Cottonwood Creek Bridge Fee	\$10,809	City (standard fee, retained for future use)
Park Fees-in-Lieu of Dedication	\$24,962 (14.6% of \$1,781 per unit)	City (held in Public Space Development Fund)
Fire Station & Apparatus Fee	\$19,898 (\$1,631 per acre)	City (held until fire station built)

EXPENDITURE NOTES:

Powerwood No. 7 Annexation

General Fund/Public Safety Sales Tax (PSST) Fund Fiscal Impact Analysis, 2014-2023

POLICE:

As development occurs, the Police Department is responsible for regular police patrol and first response services in the area. However, the proposed annexation area is located in a serviced area, and the addition of 96 residential units will not have an identifiable marginal increase in cost of services for the Police Department within the next ten years.

FIRE:

As part of the Annexation Agreement, the Annexor will pay their fair and equitable share of the land and construction expenses and initial equipment costs for a future fire station at \$1,631 per acre. These funds were initially intended for Fire Station #21 when the Annexation Agreement was written, however, since Station #21 is now completed, funded through a combination of previously received annexation revenue and PSST funds, these annexation funds will now be dedicated to Station #22. The only additional, operational, identifiable marginal costs of providing service to the annexed area are fuel, medical supplies and maintenance (~\$145-\$174 annually).

PUBLIC WORKS – STREETS, TRAFFIC ENGINEERING, CITY ENGINEERING:

There are no additional public infrastructure or maintenance obligations associated with this annexation in the next ten years. The parcel is an infill parcel so infrastructure surrounding the parcel is already existing and serving other parcels. There are no additional marginal maintenance costs, as the City is currently maintaining all roadways surrounding the parcel in the next ten years.

As part of the Annexation Agreement, the Annexor has agreed to pay a fee for development of the Tutt Boulevard bridge over Cottonwood Creek and the Cottonwood Creek Drainage Basin Bridge fee. The Tutt Boulevard Bridge fee will be escrowed to be used when the bridge is constructed or to be used to fund future cost recovery agreements associated with the construction. The Cottonwood Creek Drainage Basin fee will be used to pay back developers who have already constructed drainage facilities in this basin.

PUBLIC WORKS -TRANSIT:

There are currently no transit services in this area. Transit does not anticipate any new transit services in this area within the next ten years, thus there are no identifiable marginal costs within the next ten years. However, transit will be opening a park and ride near the area, which will benefit the households in the annexed area.

PARKS:

As part of the Annexation Agreement, the Annexor will pay 14.6% of the fee-in-lieu of park land dedication (which is \$1,781 per unit per the City's Subdivision Code). The fee will be held in the Public Space and Development Fund for future park development in this area.

TO: Larry Larsen, Senior Planner

FROM: Nina Vetter, Senior Analyst

DATE: December 18, 2013

SUBJECT: Northgate Estates Addition No. 2 Annexation - Fiscal Impact Analysis

A copy of the fiscal impact analysis for the Northgate Estates Addition No. 2 is attached. At the request of the Planning Department, the Budget Office prepared a fiscal impact analysis estimating the City General Fund and Public Safety Sales Tax (PSST) fund revenue and expenditures attributable to the Northgate Estates Addition No. 2 development for the period 2014-2023.

The fiscal review criteria of the City Code states city costs related to infrastructure and service levels shall be determined for a ten-year time horizon for only the appropriate municipal funds.

The methodology used for the fiscal impact analysis is a case study approach, where a mini-budget process is undertaken in which City units are asked to project the increased marginal cost of providing services to the development for 2014-2023. The Budget Office estimates the city revenue stemming from the development, as outlined in the Revenue Notes.

The Annexation Agreement, drafted in 2008, provides for specific project-related fees for Fire Station #22, a Police Station, Off-Site Transportation and Cost Recovery for North Gate Boulevard. The specific project related revenue is not included in the FIA itself, but stated at the end of the Revenue Notes for informational purposes.

Most departments indicated that there were no identifiable marginal costs of providing services to this development, as the area is currently being serviced by public safety agencies, and the surrounding infrastructure and roadways are already being maintained by the City as they fall within the service area of surrounding parcels. The Fire Department identified marginal increases in operation costs of ~\$7-\$10 annually.

The result of the fiscal impact analysis is a positive cumulative cashflow for the City during the 10-year timeframe.

The Summary of Expenditures and Revenues is attached. Also, the Expenditure and Revenue Notes are attached that provide the methodology for calculating the expenditures and revenues.

ATTACHMENT F

GENERAL FUND FISCAL IMPACT ANALYSIS SUMMARY OF EXPENDITURES AND REVENUE FOR NORTHGATE ESTATES ADDITION NO. 2 ANNEXATION

	Projected 2014	Projected 2015	Projected 2016	Projected 2017	Projected 2018	Projected 2019	Projected 2020	Projected 2021	Projected 2022	Projected 2023
EXPENDITURES										
<u>Total Salaries, Operating, and Capital Outlay</u>										
Police	0	0	0	0	0	0	0	0	0	0
Fire	7	8	8	8	8	8	9	9	9	10
Public Works - Streets	0	0	0	0	0	0	0	0	0	0
Public Works - Transportation Engineering	0	0	0	0	0	0	0	0	0	0
Public Works - City Engineering	0	0	0	0	0	0	0	0	0	0
Public Works - Transit	0	0	0	0	0	0	0	0	0	0
Parks, Recreation and Cultural Services	0	0	0	0	0	0	0	0	0	0
TOTAL EXPENDITURES	7	8	8	8	8	8	9	9	9	10
REVENUES										
Property Taxes	0	0	0	1,278	2,633	2,712	2,793	2,877	2,963	3,052
Specific Ownership Taxes	0	0	0	150	308	317	327	337	347	357
Road & Bridge Revenue	0	0	0	49	101	104	108	111	114	118
Sales and Use Tax Revenue (Building Materials)	0	8,240	8,487	0	3,042	0	0	0	0	0
General Fund Sub-Total	0	8,240	8,487	1,477	6,085	3,134	3,228	3,325	3,424	3,527
<u>Public Safety Sales Tax Fund</u>										
Sales and Use Tax Revenue (Building Materials)	0	1,648	1,697	0	0	0	0	0	0	0
Public Safety Sales Tax Fund Sub-Total	0	1,648	1,697	0						
TOTAL REVENUE	0	9,888	10,185	1,477	6,085	3,134	3,228	3,325	3,424	3,527
REVENUE SURPLUS/DEFICIT										
<u>(Total Rev. less Total Exp.)</u>										
ANNUAL	(7)	9,880	10,177	1,469	6,077	3,126	3,219	3,316	3,415	3,517
CUMULATIVE	(7)	9,873	20,050	21,519	27,595	30,721	33,940	37,255	40,670	44,187

REVENUE NOTES

Northgate Estates Addition No. 2 Annexation

General Fund/Public Safety Sales Tax Fund Fiscal Impact Analysis, 2014-2023

General Fund

PROPERTY TAX:

It is assumed property taxes will be collected in the year 2017 based upon beginning construction in 2015 because of the time lag associated with placing assessed value onto the assessment rolls. The 2017 revenue is calculated by multiplying the City mill levy of 4.279 mills by the projected increase in City assessed valuation resulting from the proposed development. This assumes there is no change in the non-residential assessment ratio of 29% and that the church is property-tax exempt. The cumulative assessed valuation includes a 3% annual increase in market values.

SPECIFIC OWNERSHIP TAX:

The Specific Ownership Tax revenue is calculated at 11.70% of property tax revenues. This is based on the 2012 actual City specific ownership tax revenues as a percent of property tax revenue.

ROAD & BRIDGE REVENUE:

The Road & Bridge Revenue is calculated at 3.85% of the property tax revenues. This is based on the 2012 actual City road & bridge revenues as a percent of property tax revenue.

SALES AND USE TAX:

The revenue calculation assumes the existing General Fund tax rate and existing collection practices. Projections only include sales tax revenue from building materials, as there is no residential development included in this annexation. Sales Tax Revenue for Building Materials is calculated based on sales taxable materials at 40% of the value of the office buildings (excluding the church, as this assumes church-related taxable materials are tax exempt).

MISCELLANEOUS REVENUE:

There is no miscellaneous revenue, as only residential development that increases the population of the City results in increased miscellaneous revenue through this model.

Public Safety Tax Fund

SALES AND USE TAX:

The revenue calculation assumes the existing PSST rate and existing collection practices. The revenue calculation assumes the existing General Fund tax rate and existing collection practices. Projections only include sales tax revenue from building materials, as there is no residential development included in this annexation. Sales Tax Revenue for Building Materials is calculated based on sales taxable materials at 40% of the value of the office buildings (once again excluding the church, as this assumes church-related taxable materials are tax exempt).

Additional Annexation Agreement Items Not Included in FIA

Annexation Fee	\$ Amount	Recipient
Off-Site Transportation Improvement Fee	\$51,540 (\$10,206 per acre)	City Escrows for Developer
Cost Recovery for North Gate Boulevard	\$62,125	City Escrows for Developer
Police Station & Related Equipment	\$3,419 (\$677 per acre)	City
Fire Station & Apparatus Fee	\$3,985 (\$789 per acre)	City (for Fire Station #22)

EXPENDITURE NOTES:

**Northgate Estates Addition No. 2 Annexation
General Fund/Public Safety Sales Tax (PSST) Fund Fiscal Impact Analysis, 2014-2023**

POLICE:

As part of the Annexation Agreement, the Annexor will pay their fair and equitable share of the capital cost of a new police station and initial equipment required at a rate of \$677 per acre. There are currently no plans for a Police Station to service this area, thus the funds will be held in escrow for future area Police Station development.

The proposed annexation area is located in a currently serviced area, and the addition of office space and a church do not generate an identifiable marginal increase in cost of services for the Police Department within the next ten years.

FIRE:

As part of the Annexation Agreement, the Annexor will pay their fair and equitable share of the land and construction expenses and initial equipment costs for a future fire station at \$789 per acre for Station #22 (as required by the Annexation Agreement). The only additional, operational, identifiable marginal costs of providing service to the annexed area are fuel, medical supplies and maintenance (~\$7.00-\$10.00 annually).

PUBLIC WORKS – STREETS, TRAFFIC ENGINEERING, CITY ENGINEERING:

There are no additional public infrastructure or maintenance obligations associated with this annexation in the next ten years. The parcel is an infill parcel so infrastructure surrounding the parcel is already existing and serving other parcels. There are no additional marginal maintenance costs in the next ten years, as the City is currently maintaining all roadways surrounding the parcel.

As part of the Annexation Agreement, the Annexor has agreed to pay an Off-Site Transportation Improvement Fee of \$10,206 per acre, which the City will escrow to pay back past developer investment in roads in the area. Additionally, the Annexor has agreed to pay a Cost Recovery for North Gate Boulevard of \$62,125, which the City will also escrow to pay back past developer investment in North Gate Boulevard adjacent to the parcel.

PUBLIC WORKS - TRANSIT:

There are currently no transit services in this area. Transit does not anticipate any new transit services in this area within the next ten years, thus there are no identifiable marginal costs within the next ten years. However, transit will be opening a park and ride near the area, which will benefit the households in the annexed area.

PARKS:

This annexation does not require the creation of an additional park site, as existing neighborhood parkland in the vicinity will meet the park service radius needs, within the next ten years.

Powerwood No. 7
Northgate Estates No. 2
Annexations

City Council Worksession
January 13, 2014

Issue:

Current owner now desires to “resurrect” and finalize two previously approved City Council annexations that were perfected by the annexors failure to sign and record the necessary annexation agreements and annexation plats. Staff desires direction from City Council regarding how to proceed.

Procedural Background

The authority to approve annexations rests with the City Council. Since the two annexations were previously approved by the previous City Council / City Manager form of City government; Staff sought direction from Councilman Pico and Miller since the annexations are in their respective districts. Councilman Miller suggested this worksession discussion.

3

Background

- The Powerwood No. 7 Annexation was approved by City Council in September 2006, but was never finalized and recorded.
- The Northgate Estates No. 2 Annexation was approved by City Council in June 2008, but was never finalized and recorded.

4

Powerwood No. 7

- Prior to recording, the owner fell into bankruptcy & lost control of the property;
- The new owner secured the property from the bank and desired not to finalize the annexation at that time; and
- The owner now wishes that the annexation be finalized & recorded.

5

Powerwood No. 7



6

Powerwood No. 7



Powerwood No. 7

- Previously City Council approved:
 - Powerwood No. 7 Annexation Ordinance 06-164;
 - Powerwood No. 7 Annexation Agreement;
 - Powerwood No. 7 Master Plan for Residential Use (8 to 12 units / acre); and
 - Zoning to "A" Agricultural (Hold zone)

Northgate Estates No. 2

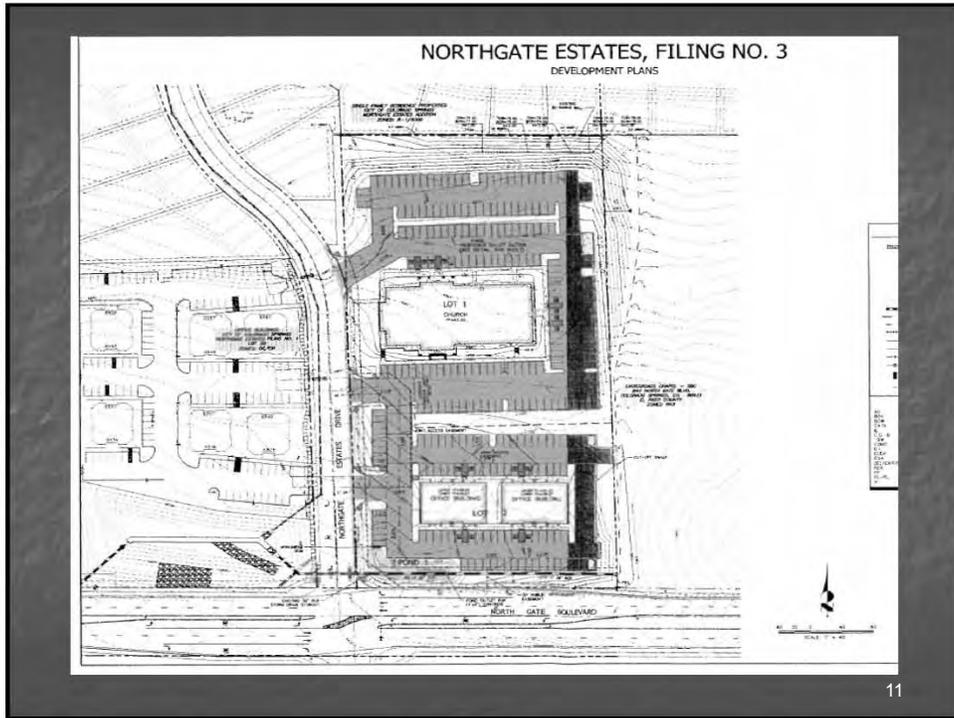
- Prior to recording, the owner desired the annexation be placed on “hold” and subsequently sold the property;
- The new owner secured the property from the previous owner and desired not to finalize the annexation at that time; and
- The owner now wishes that the annexation be finalized & recorded.

9

Northgate Estates No. 2



10



Northgate Estates No. 2

- Previously City Council approved:
 - Northgate Estates No. 2 Annexation Ord. 08-94;
 - Northgate Estates No. 2 Annexation Agreement;
 - Northgate Estates No. 2 Development Plan for two office buildings and church; and
 - Zoning to "OC/CR" Office Complex with Conditions of Record

Alternative Actions

- Accept and reaffirm the previous City Council's approvals
- Direct Staff to renegotiate & revise the annexation agreements, plans & zoning for City Council review & approvals;
- Begin the annexation, plan review & zoning anew & void all previous City Council approvals

13

Recommendation

Based on the size, location and terms & conditions of the approved annexation agreements – Staff recommends

Alternative #1: Accept & reaffirm the previous City Council approvals

14



WORK SESSION AGENDA ITEM

COUNCIL MEETING DATE: January 14, 2014

TO: President and Members of City Council
CC: Mayor Steve Bach
VIA: Laura Neumann, Chief of Staff/Chief Administrative Officer
FROM: Peter Wysocki, Planning and Development Director
Larry Larsen, Senior Planner

Subject Title: Human Service Establishment Code Amendment

SUMMARY:

This is a request by City of Colorado Springs Planning and Development Department Land Use Review Division for approval of an amendment to the City Zoning Code. This proposed amendment to Chapter 7, Article 3, Sections 103, 105 and 705 of the Code of the City of Colorado Springs, 2001 as amended ('City Code') pertains to the Development Plan requirements for Human Service Establishments. The modifications to Section 705 are to have the definitions from the Mixed Use Zone Districts match those throughout Chapter 7 ('Zoning Code').

Development Plans ('DP') applications are required for Human Service Establishments in a variety of zone districts. However, with the most recent Code scrubs undertaken by the Planning and Development Department in 2012, the requirement for a DP that was noted in Section 7.3.105.F (2) (d) was then negated in Section 7.5.502 'Development Plans' as this section states that DP's are only required if there is a change in 'Use Type' rather than an actual change of use.

PREVIOUS COUNCIL ACTION:

None

BACKGROUND:

From 2010 to 2012, a Committee was formed consisting of City staff, members of the development community and neighborhood representatives. The committee's task was to comprehensively review and identify changes and modifications that were necessary to clarify the Zoning Code and consequently remove unnecessary barriers to development. The portion of the Zoning Code pertaining to human service establishments was modified to align the Code's various definitions with the regulations of the State of Colorado. The intent of the Committee was to retain the DP requirements for human service establishments. Through the process, the letters identifying the situations when a DP was required were removed from the use tables contained in Sections 7.3.103 and 7.3.203 of the City Code. The intent of the Committee was to add additional language in Section 7.5.502 to continue the DP requirement for human service establishments; however, when the Zoning Code amendments were written and therefore passed by City Council, the intended language was inadvertently left out.

FINANCIAL IMPLICATIONS:

Not applicable

BOARD/COMMISSION RECOMMENDATION:

The Planning Commission unanimously approved the proposed amendment at their November 21, 2013 meeting.

STAKEHOLDER PROCESS:

The proposed Zoning Code amendment has been reviewed by the Office of the City Attorney and input received from the Land Use Review Division staff.

RECOMMENDATION:

As recommended by the Planning Commission, City Council is requested to approve the amendment.

Attachments:

- An ordinance amending Sections 103 (Permitted, Conditional and Accessory Uses) and 105 (Additional Standards for Specific Uses Allowed in Residential Zones) of Part 1 (Residential Districts) and Section 705 (Mixed Use Permitted, Conditional and Accessory Uses) of Part 7 (Mixed Use Zone Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, as amended, pertaining to Human Service Establishments
- CPC Record-of-Decision
- CPC Agenda

ORDINANCE NO. 14-_____

AN ORDINANCE AMENDING SECTIONS 103 (PERMITTED, CONDITIONAL AND ACCESSORY USES) AND 105 (ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES) OF PART 1 (RESIDENTIAL DISTRICTS) AND SECTION 705 (MIXED USE PERMITTED, CONDITIONAL AND ACCESSORY USES) OF PART 7 (MIXED USE ZONE DISTRICTS) OF ARTICLE 3 (LAND USE ZONING DISTRICTS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO HUMAN SERVICE ESTABLISHMENTS

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

Section 1. That Section 103 (Permitted, Conditional and Accessory Uses) of Part 1 (Residential Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, is hereby amended to read as follows:

7.3.103: PERMITTED, CONDITIONAL AND ACCESSORY USES:

* * *

Use Types	A	R	R-1 9000	R-1 6000	R-2	R-4	R-5	SU	TND
Residential use types:									

* * *

Human service establishments:									
-------------------------------	--	--	--	--	--	--	--	--	--

* * *

	Large family care home	C	C	C	C	C	P	P	P	CP
	Residential childcare facility	C	C	C	C	C	P	P	P	CP

Section 2. That Section 105 (Additional Standards for Specific Uses Allowed in Residential Zones) of Part 1 (Residential Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, is hereby amended to read as follows:

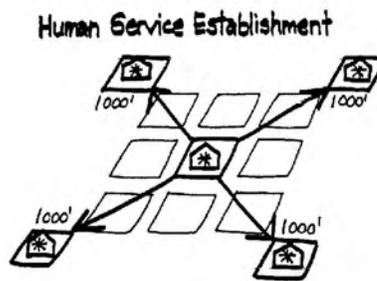
7.3.105: ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES:

* * *

F. Human Service Establishments:

* * *

- a. Separation Requirements: No human service establishment shall be located within one thousand feet (1,000') of another human service establishment. The one thousand foot (1,000') spacing requirement shall not apply **between two (2)** establishments licensed by the State as assisted living or long term care. The one thousand foot (1,000') separation measurement shall be made in a straight line without regard to intervening structures or objects from the nearest property line of the proposed human service establishment to the nearest property line of another human service establishment.



* * *

- c. Permitted Zones For Human Service Establishments:

(1) Human service homes are permitted in the A, R, R-1 9000, R-1 6000, R-2, R-4, R-5, SU, TND, OR, OC, C-5, PUD, or FBZ, **MU-CC, MU-NC or MC-R/EZ** zone districts.

(2) All other types of human service establishments may be allowed in accord with sections 7.3.103, ~~of this part and section 7.3.203 and 7.3.705(B)~~ of this **Zoning Code**

(3) **A development plan is required for the following permitted uses identified in the tables in sections 7.3.103, 7.3.203 and 7.3.705(B): a human service residence, large family care home, hospice, residential child care facility, domestic violence safehouse housing more than five (5) residents, family support residence, human service facility, drug and alcohol treatment facility, human service shelter and detoxification center use.**

(4) In the PUD zone, **after October 1, 2012, all human service establishment uses** other than human service homes, **shall be determined at the time of the establishment of the zone district.** ~~specific allowance of human service use types is in accord with the approved zone district after October 1, 2012. article with some establishments requiring a development plan or conditional use approval prior to the start of operation depending on the type of zone district.~~

(5) In the FBZ zone, **all human service establishment uses,** other than human service homes, **shall be determined at the time of regulating plan approval.** ~~specific allowance of human service use types is in accord with the approved regulating plan.~~

Section 3. That Section 705 (Mixed Use Permitted, Conditional and Accessory Uses) of Part 7 (Mixed Use Zone Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, is hereby amended to read as follows:

7.3.705: MIXED USE PERMITTED, CONDITIONAL AND ACCESSORY USES:

The uses allowed in these districts are subject to the standards in this part, **the applicable human service establishment standards in article 3 of this chapter**, the applicable parking, landscaping, sign, and other general site development standards in article 4 of this chapter, and the applicable administrative and procedural regulations in article 5 of this chapter.

* * *

Use Types	MU-NC	MU-CC	MU-R/EC
Residential Use Types:			

* * *

Human Service Establishments:			
Human Service Home	P	P	P
Human Service Residence	C	P	P
Family Care Home	P	P	P
Large Family Care Home	C	P	P
Hospice	C	P	P
Residential Child Care Facility	C	P	P
Domestic Violence Safehouse	P	P	P
Family Support Residence	C	P	P
Human Service Facility	C	P	P
Drug and Alcohol Treatment Facility	C	P	P
Human Service Shelter	C	P	P
Detoxification Center			
Healthcare support facility	C	P	P
Human service facility:	C	P	P
Hospice	C	P	P

	Nursing home	€	P	P
	Youth home	€	P	P
	Human service home	P	P	P
	Human service residence:	P	P	P
	Hospice	P	P	P
	Family care/foster adopt home	P	P	P
	Youth home	P	P	P
	Human service shelter:	€	P	P
	Healthcare support facility	€	P	P

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 5. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this _____ day of _____, 2014.

Finally passed _____

Keith King, Council President

ATTEST:

Sarah B. Johnson, City Clerk

**CITY OF COLORADO SPRINGS PLANNING COMMISSION
RECORD-OF-DECISION**

NEW BUSINESS CALENDAR

DATE: November 21, 2013
ITEM: 7
STAFF: Larry Larsen
FILE NO.: CPC CA 13-00119
PROJECT: Human Service Establishment Code Amendment

Commissioners Walkowski and Shonkwiler now excused

STAFF PRESENTATION

Mr. Larry Larsen, City Senior Planner, presented PowerPoint slides (Exhibit A).

CITIZENS IN FAVOR/OPPOSITION

None

STAFF REQUESTED TO SPEAK

None

DECISION OF THE PLANNING COMMISSION

Moved by Commissioner Markewich, seconded by Commissioner Henninger, to approve **Item 7-File No. CPC CA 13-00119**, the proposed Zoning Code amendment. Motion carried 6-0 (Commissioners Shonkwiler and Walkowski excused with Commissioner Phillips absent).

November 21, 2013

Date of Decision



Edward Gonzalez, Planning Commission Chair

Human Services Establishments City Zoning Code Amendment

City Planning Commission
November 21, 2013

Peter Wysocki, Planning Director
Larry Larsen, Senior Planner

1

Human Services Establishments City Zoning Code Amendment

CPC CA 13-00119: City Code
amendment regarding the
requirement for development
plans for Human Service
Establishments.

2

Human Service Establishments City Zoning Code Amendment

ISSUE: The 2012 Code Scrub amendment inadvertently removed the development plan requirement for Human Service Establishments. This was clearly intended to retain this requirement. Through a companion development plan requirement amendment, this change resulted and was not reinstated.

3

Human Service Establishments City Zoning Code Amendment

CONCERN: Without the requirement for a development plan a human service establishment could be approved without adequate review for parking, lighting, accessibility, or other factors without public notification.

4

Human Service Establishments City Zoning Code Amendment

SOLUTION: Approve the City Zoning Code Amendment to reinstate the previously codified requirement to require development plans for Human Service Establishments.

5

Human Service Establishment City Zoning Code Amendment

City Planning & Development Staff finds the amendment in compliance with City Code Sections 7.5.602.A and 7.5.605.B, regarding the application and process to amend the text of the City Zoning Code.

6

Human Service Establishment City Zoning Code Amendment

Summary/Recommendation: The City Planning Commission is asked to recommend to the City Council approval of City Zoning Amendment Ordinance.

7

Questions?

8

ITEM NO: 7

STAFF:
PETER WYSOCKI AND LARRY LARSEN

FILE NO:
CPC CA 13-00119 - LEGISLATIVE

PROJECT: HUMAN SERVICE ESTABLISHMENT CODE AMENDMENT

**APPLICANT: CITY OF COLORADO SPRINGS – LAND USE REVIEW DIVISION,
PLANNING & DEVELOPMENT**

PROJECT SUMMARY:

This proposed amendment to Chapter 7, Article 3, Sections 103, 105 and 705 of the Code of the City of Colorado Springs, 2001 as amended ('City Code') pertains to the Development Plan requirements for Human Service Establishments. The modifications to Section 705 are to have the definitions from the Mixed Use Zone Districts match those throughout Chapter 7 ('Zoning Code'). **(FIGURE 1)**

Development Plans ('DP') applications are required for Human Service Establishments in a variety of zone districts. However, with the most recent Code scrubs undertaken by the Planning and Development Department in 2012, the requirement for a DP that was noted in Section 7.3.105.F(2)(d) was then negated in Section 7.5.502 'Development Plans' as this section states that DP's are only required if there is a change in 'Use Type' rather than an actual change of use.

BACKGROUND:

From 2010 to 2012, a Committee was formed consisting of City staff, members of the development community and neighborhood representatives. The committee's task was to comprehensively review and identify changes and modifications that were necessary to clarify the Zoning Code and consequently remove unnecessary barriers to development. The portion of the Zoning Code pertaining to human service establishments was modified to align the Code's various definitions with the regulations of the State of Colorado. The intent of the Committee was to retain the DP requirements for human service establishments. Through the process, the letters identifying the situations when a DP was required were removed from the use tables contained in Sections 7.3.103 and 7.3.203 of the City Code. The intent of the Committee was to add additional language in Section 7.5.502 to continue the DP requirement for human service establishments; however, when the Zoning Code amendments were written and therefore passed by City Council, the intended language was inadvertently left out.

STAKEHOLDER PROCESS AND INVOLVEMENT:

The proposed Zoning Code amendment has been reviewed by the Office of the City Attorney and input received from the Land Use Review Division staff.

ANALYSIS OF CRITERIA AND MAJOR ISSUES:

Zoning Code amendments are proposed and processed in accord with Section 7.5.601 of the City Code. As the applicant, the City's Land Use Review Division is recommending to the Planning Commission the following changes to the Zoning Code:

While Section 7.3.105.F of the Code states that DP's are required for certain types of human service establishments in a variety of zone districts, Section 7.5.502.B negates the requirement and indicates that a DP is only required with a change in 'Use Type' not in a change of use. Section 7.5.502.B(5) specifically states: *'A development plan shall be required prior to the issuance of a building permit or the commencement of a new use...for: The conversion of an existing building's or property's land use type to another land use type (ex.: residential use to a commercial use, but not commercial use to another commercial use, etc.)'*.

Consequently, if a residence within an existing zone is proposed to be changed from a home to a large scale human service establishment, no DP would be required, only the applicable building permits. Staff believes that a DP should be required to review and address issues such as parking, lighting, accessibility, screening, among others. This proposed Zoning Code amendment will again require a DP as noted in Sections 7.3.103 and 7.3.203.

Staff also recommends an amendment to Section 7.3.105.F(a) to clarify that the exemption from the 1,000-foot spacing requirement applies only between assisted or long term care facilities.

Staff believes that this code change is not substantial as the requirement for a DP for various types of human service establishments was previously in place since 2001. Additionally, this clarification will provide a better understanding of the requirements for the citizens and operators of human service establishments what is required for the citizens, human service providers and the Land Use Review staff.

STAFF'S RECOMMENDATION:

ITEM NO. : 7 CPC CA 13-00119 – ZONING CODE AMENDMENT

Recommend to City Council approval of the proposed Zoning Code amendment as written.

CITY ATTY'S OFFICE
 CODE CHANGE REVIEW
 ATTY INIT _____
 DATE ____/____/____

ORDINANCE NO. 13-_____

AN ORDINANCE AMENDING SECTIONS 103 (PERMITTED, CONDITIONAL AND ACCESSORY USES) AND 105 (ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES) OF PART 1 (RESIDENTIAL DISTRICTS) AND SECTION 705 (MIXED USE PERMITTED, CONDITIONAL AND ACCESSORY USES) OF PART 7 (MIXED USE ZONE DISTRICTS) OF ARTICLE 3 (LAND USE ZONING DISTRICTS) OF CHAPTER 7 (PLANNING, DEVELOPMENT AND BUILDING) OF THE CODE OF THE CITY OF COLORADO SPRINGS 2001, AS AMENDED, PERTAINING TO HUMAN SERVICE ESTABLISHMENTS

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

Section 1. That Section 103 (Permitted, Conditional and Accessory Uses) of Part 1 (Residential Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, is hereby amended to read as follows:

7.3.103: PERMITTED, CONDITIONAL AND ACCESSORY USES:

* * *

Use Types	A	R	R-1 9000	R-1 6000	R-2	R-4	R-5	SU	TND
Residential use types:									

* * *

Human service establishments:									
-------------------------------	--	--	--	--	--	--	--	--	--

* * *

FIGURE 1

	Large family care home	C	C	C	C	C	P	P	P	CP
	Residential childcare facility	C	C	C	C	C	P	P	P	CP

Section 2. That Section 105 (Additional Standards for Specific Uses Allowed in Residential Zones) of Part 1 (Residential Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, is hereby amended to read as follows:

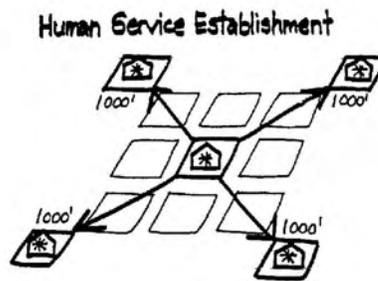
7.3.105: ADDITIONAL STANDARDS FOR SPECIFIC USES ALLOWED IN RESIDENTIAL ZONES:

* * *

F. Human Service Establishments:

* * *

- a. Separation Requirements: No human service establishment shall be located within one thousand feet (1,000') of another human service establishment. The one thousand foot (1,000') spacing requirement shall not apply **between two (2)** establishments licensed by the State as assisted living or long term care. The one thousand foot (1,000') separation measurement shall be made in a straight line without regard to intervening structures or objects from the nearest property line of the proposed human service establishment to the nearest property line of another human service establishment.



* * *

- c. Permitted Zones For Human Service Establishments:

FIGURE 1

(1) Human service homes are permitted in the A, R, R-1 9000, R-1 6000, R-2, R-4, R-5, SU, TND, OR, OC, C-5, PUD, ~~or FBZ~~, **MU-CC, MU-NC or MC-R/EZ** zone districts.

(2) All other types of human service establishments may be allowed in accord with sections 7.3.103, ~~of this part and section 7.3.203 and 7.3.705(B)~~ of this **Zoning Code**

(3) **A development plan is required for the following permitted uses identified in the tables in sections 7.3.103, 7.3.203 and 7.3.705(B): a human service residence, large family care home, hospice, residential child care facility, domestic violence safehouse housing more than five (5) residents, family support residence, human service facility, drug and alcohol treatment facility, human service shelter and detoxification center use.**

(4) In the PUD zone, **after October 1, 2012, all human service establishment uses** other than human service homes, **shall be determined at the time of the establishment of the zone district.** ~~specific allowance of human service use types is in accord with the approved zone district after October 1, 2012. article with some establishments requiring a development plan or conditional use approval prior to the start of operation depending on the type of zone district.~~

(5) In the FBZ zone, **all human service establishment uses**, other than human service homes, **shall be determined at the time of regulating plan approval.** ~~specific allowance of human service use types is in accord with the approved regulating plan.~~

Section 3. That Section 705 (Mixed Use Permitted, Conditional and Accessory Uses) of Part 7 (Mixed Use Zone Districts) of Article 3 (Land Use Zoning Districts) of Chapter 7 (Planning, Development and Building) of the Code of the City of Colorado Springs 2001, is hereby amended to read as follows:

7.3.705: MIXED USE PERMITTED, CONDITIONAL AND ACCESSORY USES:

* * *

The uses allowed in these districts are subject to the standards in this part, **the applicable human service establishment standards in article 3 of this chapter**, the applicable parking, landscaping, sign, and other general site development standards in article 4 of this chapter, and the applicable administrative and procedural regulations in article 5 of this chapter.

* * *

Use Types	MU-NC	MU-CC	MU-R/EC
Residential Use Types:			

* * *

Human Service Establishments:			
Human Service Home	P	P	P
Human Service Residence	C	P	P
Family Care Home	P	P	P
Large Family Care Home	C	P	P
Hospice	C	P	P
Residential Child Care Facility	C	P	P
Domestic Violence Safehouse	P	P	P
Family Support Residence	C	P	P
Human Service Facility	C	P	P
Drug and Alcohol Treatment Facility	C	P	P
Human Service Shelter	C	P	P
Detoxification Center			
Healthcare support facility	C	P	P
Human service facility:	C	P	P
Hospice	C	P	P

FIGURE 1

Nursing home	€	P	P
Youth home	€	P	P
Human service home	P	P	P
Human service residence:	P	P	P
Hospice	P	P	P
Family care/foster adopt home	P	P	P
Youth home	P	P	P
Human service shelter:	€	P	P
Healthcare support facility	€	P	P

Section 4. This ordinance shall be in full force and effect from and after its passage and publication as provided by Charter.

Section 5. Council deems it appropriate that this ordinance be published by title and summary prepared by the City Clerk and that this ordinance shall be available for inspection and acquisition in the office of the City Clerk.

Introduced, read, passed on first reading and ordered published this _____ day of _____, 2013.

Finally passed _____

 Keith King, Council President

ATTEST:

 Sarah B. Johnson, City Clerk



Work Session Agenda Item

Council Meeting Date: January 13, 2014

To: President and Members of City Council

cc: Mayor Steve Bach

From: Wynetta Massey, Interim City Attorney

Subject Title: Introduction of Standardized Intergovernmental Agreement Resolution Format for CDOT Funded Projects in 2014

Summary: The Colorado Department of Transportation (CDOT) has recently updated its grant funding templates and drafted them as intergovernmental agreements (IGAs). Through the use of the template, CDOT has standardized the terms and conditions of the grant funding IGAs, with the names of the parties, the project name/description and the amount of grant funding awarded as the only changes with each project. In compliance with C.R.S. § 29-1-203, the City Council must approve IGAs in its legislative capacity. The purpose of this Work Session discussion is to familiarize City Council with the grant funding IGAs so that a more streamlined approval process can be used for these types of IGAs.

Previous Council Action: The approved 2014 CIP list and the budget for the City's grant funds including anticipated CDOT funding for the projects contemplated by the proposed resolution.

Background: These grant funding IGAs provide federal pass through funds from CDOT to the City to assist in the completion of roadway and bridge projects throughout the City. In compliance with C.R.S. § 29-1-203, Council must approve the IGAs by Council resolution. Council may approve all CDOT funding IGAs through the passage of one resolution. This Work Session discussion will introduce Council to the IGA template, and standard cover memo and resolution formats. The proposed resolution includes all anticipated grant funded projects approved with the 2014 budget and appropriations, including those for which the grant funding IGAs have not yet been finalized by CDOT, so that all grant funding IGAs can be executed expeditiously and delays in receiving the grant funds can be avoided.

Financial Implications: Ordinance No. 13-77 (2014 Appropriation Ordinance) appropriated \$30,000,000 and included these anticipated CDOT funding grants in 2014. With approval of the proposed resolution and upon receipt of fully executed IGAs between CDOT and the City of Colorado Springs, Finance will move the identified funds from the grants fund to the specified projects.

Board/Commission Recommendation: The projects for which CDOT grant funding is anticipated have also been previously approved by the Pikes Peak Area Council of Governments (PPACG) Board.

Alternatives: Council could direct staff to bring each of the CDOT funding IGAs to Council for approval by separate resolutions.

Recommendation: Approve all template grant funding IGAs through passage of the proposed form resolution.

c: Laura Neumann, Chief of Staff
Dave Lethbridge, Interim Public Works Director

Attachments:

- Form Resolution Approving and Authorizing Eleven (11) Intergovernmental Agreements Between the City of Colorado Springs and the Colorado Department of Transportation for Roadway and Bridge Project Funding
- Form CDOT Funding Grant IGA Resolution Formal Cover Memo
- Sample CDOT Funding Grant IGAs



CITY OF COLORADO SPRINGS

FORMAL AGENDA ITEM

COUNCIL MEETING DATE: January 28, 2014

TO: President and Members of City Council

VIA: Mayor Steve Bach

FROM: Laura Neumann, Chief of Staff
Dave Lethbridge, Interim Public Works Director

Subject Title: A Resolution Approving and Authorizing Eleven (11) Intergovernmental Agreements Between the City of Colorado Springs and the Colorado Department of Transportation for Roadway and Bridge Project Funding

SUMMARY:

Approval of the attached resolution will:

Authorize the Mayor to execute Intergovernmental Agreements (IGAs), any amendments and subsequent option letters between the City and the Colorado Department of Transportation (CDOT) ensuring funding in the amounts listed for the following projects:

Paseo Bridge Replacement

City Project Number: 9319067
Federal Highway Administration Number: BRO M240-156
CDOT Sub Account Number: 19811
Funding: \$780,000.00

31st Street Bridge

City Project Number: 9319068
Federal Highway Administration Number: STU M240-153
CDOT Sub Account Number: 19808
Funding: \$1,640,000

Academy: Airport to Academy Loop

City Project Number: 9319069
Federal Highway Administration Number: STU M240-154
CDOT Sub Account Number: 19809
Funding: \$406,250.00

Hancock/Academy PEL

City Project Number: 9319070
Federal Highway Administration Number: STU M240-150
CDOT Sub Account Number: 19601
Funding: \$500,000.00

Las Vegas PEL

City Project Number: 9319071

Federal Highway Administration Number: STU M240-152
CDOT Sub Account Number: 19794
Funding: \$480,000.00

Rockrimmon Bridge Replacement

City Project Number: 9319072
Federal Highway Administration Number: STU M240-160
CDOT Sub Account Number: 19945
Funding: \$880,000.00

Circle Bridges

City Project Number: 9319073
Federal Highway Administration Number: BRO M240-155
CDOT Sub Account Number: 19810
Funding: \$905,000.00

Woodmen Road Widening

City Project Number: 9319053
Federal Highway Administration Number: STU M240-046
CDOT Sub Account Number: 12717
Funding: \$3,602,052.00

2014 Traffic Signal Upgrades

City Project Number: 9339047
Federal Highway Administration Number: STU M240-159
CDOT Sub Account Number: 19946
Funding: \$789,480.00

Advanced Detection

City Project Number: 9339041
Federal Highway Administration Number: STU M240-133
CDOT Sub Account Number: 18373
Funding: \$469,833.00

SRTS Van Buren

City Project Number: TBD
Federal Highway Administration Number: TBD
CDOT Sub Account Number: TBD
Funding: \$305,649.00*

*Includes \$61,250 PPRTA Funds

Total: \$10,758,264

PREVIOUS COUNCIL ACTION:

City Council passed ordinance 13-77 (2014 Appropriation Ordinance) which authorized appropriation of \$30,000,000 to the Grants Fund for 2014.

BACKGROUND:

The funding provided by the IGAs contemplated under this resolution ensures federal pass through funds from CDOT to the City assisting in completion of roadway and bridge projects throughout the City. A resolution committing to the funds and authorizing a signatory is required for CDOT IGAs. Public Works requests that City Council authorize the Mayor and staff the authority to enter into the necessary IGAs and to administer the projects through the funding that has already been appropriated by the 2014 Appropriation Ordinance. The anticipated cost share for the projects is 80% federal funds and 20% local funds.

FINANCIAL IMPLICATIONS:

Per Ordinance 13-77 (2014 Appropriation Ordinance), \$30,000,000 was appropriated for anticipated grants to be awarded in 2014. With approval of this Resolution and upon receipt of fully executed IGAs between CDOT and the City of Colorado Springs, Finance will move the funds from the \$30,000,000 approved budget to these grant projects.

BOARD/COMMISSION RECOMMENDATION:

The inclusion of these projects in the Transportation Improvement Plan (TIP) was approved by the Pikes Peak Area Council of Governments (PPACG) Board.

RECOMMENDATION:

Staff recommends approval of the attached resolution.

PROPOSED MOTION:

Motion to approve the attached resolution.

c: Sheri Landeck, Senior Grants Analyst

Attachments:

- A RESOLUTION APPROVING ELEVEN (11) INTERGOVERNMENTAL AGREEMENTS BETWEEN THE CITY OF COLORADO SPRINGS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR ROADWAY PROJECT FUNDING
- IGA for Project # STU M240-154, Academy: Airport to Academy Loop
- IGA for Project # BRO M240-155, Circle Bridges
- IGA for Project # STU M240-152, Las Vegas PEL
- IGA for Project # STU M240-153, 31st Street Bridge

A RESOLUTION APPROVING AND AUTHORIZING ELEVEN (11) INTERGOVERNMENTAL AGREEMENTS BETWEEN THE CITY OF COLORADO SPRINGS AND THE COLORADO DEPARTMENT OF TRANSPORTATION FOR ROADWAY AND BRIDGE PROJECT FUNDING

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF COLORADO SPRINGS:

Section 1. The City Council finds that the funding for roadway and bridge projects provided by the Colorado Department of Transportation (CDOT) is in the best interest of the City of Colorado Springs for the health, safety and welfare of its residents.

Section 2. Pursuant to Colorado Revised Statutes § 29-1-203, the City Council has the authority to approve the Intergovernmental Agreements (IGAs) between CDOT and the City of Colorado Springs to ensure receipt of CDOT roadway and bridge project funding.

Section 3. The IGAs between CDOT and the City of Colorado Springs must be approved and fully executed for the following eleven (11) projects at the following amounts:

Paseo Bridge Replacement

City Project Number: 9319067
Federal Highway Administration Number: BRO M240-156
CDOT Sub Account Number: 19811
Funding: \$780,000.00

31st Street Bridge

City Project Number: 9319068
Federal Highway Administration Number: STU M240-153
CDOT Sub Account Number: 19808
Funding: \$1,640,000.00

Academy: Airport to Academy Loop

City Project Number: 9319069
Federal Highway Administration Number: STU M240-154
CDOT Sub Account Number: 19809
Funding: \$406,250.00

Hancock/Academy PEL

City Project Number: 9319070
Federal Highway Administration Number: STU M240-150
CDOT Sub Account Number: 19601
Funding: \$500,000.00

Las Vegas PEL

City Project Number: 9319071
Federal Highway Administration Number: STU M240-152
CDOT Sub Account Number: 19794
Funding: \$480,000.00

Rockrimmon Bridge Replacement

City Project Number: 9319072
Federal Highway Administration Number: STU M240-160
CDOT Sub Account Number: 19945
Funding: \$880,000.00

Circle Bridges

City Project Number: 9319073
Federal Highway Administration Number: BRO M240-155
CDOT Sub Account Number: 19810
Funding: \$905,000.00

Woodmen Road Widening

City Project Number: 9319053
Federal Highway Administration Number: STU M240-046
CDOT Sub Account Number: 12717
Funding: \$3,602,052.00

2014 Traffic Signal Upgrades

City Project Number: 9339047
Federal Highway Administration Number: STU M240-159
CDOT Sub Account Number: 19946
Funding: \$789,480.00

Advanced Detection

City Project Number: 9339041
Federal Highway Administration Number: STU M240-133
CDOT Sub Account Number: 18373
Funding: \$469,833.00

SRTS Van Buren

City Project Number: TBD
Federal Highway Administration Number: TBD
CDOT Sub Account Number: TBD
Funding: \$305,649.00

Total: \$10,758,264.00

Section 4. The City Council passed ordinance 13-77 (2014 Appropriation Ordinance) which authorized appropriation of \$30,000,000.00 for anticipated grants to be awarded in 2014.

Section 5. Upon receipt of a fully executed IGA between CDOT and the City of Colorado Springs, Finance will move the funds listed above for each project from the \$30,000,000.00 approved budget to these grant projects.

Section 6. On behalf of the City, the Mayor is hereby authorized to execute and administer the IGAs, any amendments, and subsequent option letters for the projects listed in this resolution.

Dated at Colorado Springs this ____ day of _____, 2014.

Keith King, Council President

Attest:

City Clerk

STATE OF COLORADO
Department of Transportation
Agreement
with
City of Colorado Springs, Colorado

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1. PARTIES

THIS AGREEMENT is entered into by and between the City of Colorado Springs (hereinafter called the "Local Agency"), and the STATE OF COLORADO acting by and through the Department of Transportation (hereinafter called the "State" or "CDOT").

2. EFFECTIVE DATE AND NOTICE OF NONLIABILITY

This Agreement shall not be effective or enforceable until it is approved and signed by the Colorado State Controller or their designee (hereinafter called the "Effective Date"). The State shall not be liable to pay or reimburse the Local Agency for any performance hereunder, including, but not limited to costs or expenses incurred, or be bound by any provision hereof prior to the Effective Date.

3. RECITALS

A. Authority, Appropriation, And Approval

Authority exists in the law and funds have been budgeted, appropriated and otherwise made available and a sufficient unencumbered balance thereof remains available for payment and the required approval, clearance and coordination have been accomplished from and with appropriate agencies.

i. Federal Authority

Pursuant to Title I, Subtitle A, Section 1108 of the "Transportation Equity Act for the 21st Century" of 1998 (TEA-21) and/or the "Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users" (SAFETEA-LU) of 2005 and to applicable provisions of Title 23 of the United States Code and implementing regulations at Title 23 of the Code of Federal Regulations, as may be amended, (collectively referred to hereinafter as the "Federal Provisions"), certain federal funds have been and are expected to continue to be allocated for transportation projects requested by the Local Agency and eligible under the Surface Transportation Improvement Program that has been proposed by the State and approved by the Federal Highway Administration ("FHWA").

ii. State Authority

Pursuant to CRS §43-1-223 and to applicable portions of the Federal Provisions, the State is responsible for the general administration and supervision of performance of projects in the Program, including the administration of federal funds for a Program project performed by a Local Agency under a contract with the State. This Agreement is executed under the authority of CRS §§29-1-203, 43-1-110; 43-1-116, 43-2-101(4)(c) and 43-2-104.5.

B. Consideration

The Parties acknowledge that the mutual promises and covenants contained herein and other good and valuable consideration are sufficient and adequate to support this Agreement.

C. Purpose

The purpose of this Agreement is to disburse Federal funds to the Local Agency pursuant to CDOT's Stewardship Agreement with the FHWA.

D. References

All references in this Agreement to sections (whether spelled out or using the § symbol), subsections, exhibits or other attachments, are references to sections, subsections, exhibits or other attachments contained herein or incorporated as a part hereof, unless otherwise noted.

4. DEFINITIONS

The following terms as used herein shall be construed and interpreted as follows:

A. Agreement or Contract

"Agreement" or "Contract" means this Agreement, its terms and conditions, attached exhibits, documents incorporated by reference under the terms of this Agreement, and any future modifying agreements, exhibits, attachments or references that are incorporated pursuant to Colorado State Fiscal Rules and Policies.

B. Agreement Funds

"Agreement Funds" means funds payable by the State to Local Agency pursuant to this Agreement.

C. Budget

"Budget" means the budget for the Work described in **Exhibit C**.

D. Consultant and Contractor

"Consultant" means a professional engineer or designer hired by Local Agency to design the Work and "Contractor" means the general construction contractor hired by Local Agency to construct the Work.

E. Evaluation

"Evaluation" means the process of examining the Local Agency's Work and rating it based on criteria established in **§6** and **Exhibits A** and **E**.

F. Exhibits and Other Attachments

The following exhibit(s) are attached hereto and incorporated by reference herein: **Exhibit A** (Scope of Work), **Exhibit B** (Resolution), **Exhibit C** (Funding Provisions), **Exhibit D** (Option Letter), **Exhibit E** (Local Agency Contract Administration Checklist), **Exhibit F** (Certification for Federal-Aid Funds), **Exhibit G** (Disadvantaged Business Enterprise), **Exhibit H** (Local Agency Procedures), **Exhibit I** (Federal-Aid Contract Provisions), **Exhibit J** (Federal Requirements) and **Exhibit K** (Supplemental Federal Provisions).

G. Goods

"Goods" means tangible material acquired, produced, or delivered by the Local Agency either separately or in conjunction with the Services the Local Agency renders hereunder.

H. Oversight

"Oversight" means the term as it is defined in the Stewardship Agreement between CDOT and the Federal Highway Administration ("FHWA") and as it is defined in the Local Agency Manual.

I. Party or Parties

"Party" means the State or the Local Agency and "Parties" means both the State and the Local Agency

J. Work Budget

Work Budget means the budget described in **Exhibit C**.

K. Services

"Services" means the required services to be performed by the Local Agency pursuant to this Contract.

L. Work

"Work" means the tasks and activities the Local Agency is required to perform to fulfill its obligations under this Contract and **Exhibits A** and **E**, including the performance of the Services and delivery of the Goods.

M. Work Product

"Work Product" means the tangible or intangible results of the Local Agency's Work, including, but not limited to, software, research, reports, studies, data, photographs, negatives or other finished or unfinished documents, drawings, models, surveys, maps, materials, or work product of any type, including drafts.

5. TERM and EARLY TERMINATION

The Parties' respective performances under this Agreement shall commence on the Effective Date. This Agreement shall terminate after ten (10) years of state controllers signature in section 27, unless sooner terminated or completed as demonstrated by final payment and final audit.

6. SCOPE OF WORK

A. Completion

The Local Agency shall complete the Work and other obligations as described herein in **Exhibit A**. Work performed prior to the Effective Date or after final acceptance shall not be considered part of the Work.

B. Goods and Services

The Local Agency shall procure Goods and Services necessary to complete the Work. Such procurement shall be accomplished using the Contract Funds and shall not increase the maximum amount payable hereunder by the State.

C. Employees

All persons employed hereunder by the Local Agency, or any Consultants or Contractors shall be considered the Local Agency's, Consultants' or Contractors' employee(s) for all purposes and shall not be employees of the State for any purpose.

D. State and Local Agency Commitments

i. Design

If the Work includes preliminary design or final design or design work sheets, or special provisions and estimates (collectively referred to as the "Plans"), the Local Agency shall comply with and be responsible for satisfying the following requirements:

- a) Perform or provide the Plans to the extent required by the nature of the Work.
- b) Prepare final design in accordance with the requirements of the latest edition of the American Association of State Highway Transportation Officials (AASHTO) manual or other standard, such as the Uniform Building Code, as approved by the State.
- c) Prepare provisions and estimates in accordance with the most current version of the State's Roadway and Bridge Design Manuals and Standard Specifications for Road and Bridge Construction or Local Agency specifications if approved by the State.
- d) Include details of any required detours in the Plans in order to prevent any interference of the construction Work and to protect the traveling public.
- e) Stamp the Plans produced by a Colorado Registered Professional Engineer.
- f) Provide final assembly of Plans and all other necessary documents.
- g) Be responsible for the Plans' accuracy and completeness.
- h) Make no further changes in the Plans following the award of the construction contract to Contractor unless agreed to in writing by the Parties. The Plans shall be considered final when approved in writing by CDOT and when final they shall be incorporated herein.

ii. Local Agency Work

- a) Local Agency shall comply with the requirements of the Americans With Disabilities Act (ADA), and applicable federal regulations and standards as contained in the document "ADA Accessibility Requirements in CDOT Transportation Projects".
- b) Local Agency shall afford the State ample opportunity to review the Plans and make any changes in the Plans that are directed by the State to comply with FHWA requirements.
- c) Local Agency may enter into a contract with a Consultant to perform all or any portion of the Plans and/or of construction administration. Provided, however, if federal-aid funds are involved in the cost of such Work to be done by such Consultant, such Consultant contract (and the performance/provision of the Plans under the contract) must comply with all applicable requirements of 23 C.F.R. Part 172 and with any procedures implementing those requirements as provided by the State, including those in **Exhibit H**.

If the Local Agency enters into a contract with a Consultant for the Work:

- (1) Local Agency shall submit a certification that procurement of any Consultant contract complies with the requirements of 23 C.F.R. 172.5(1) prior to entering into such Consultant contract, subject to the State's approval. If not approved by the State, the Local Agency shall not enter into such Consultant contract.
- (2) Local Agency shall ensure that all changes in the Consultant contract have prior approval by the State and FHWA and that they are in writing. Immediately after the Consultant contract has been awarded, one copy of the executed Consultant contract and any amendments shall be submitted to the State.
- (3) Local Agency shall require that all billings under the Consultant contract comply with the State's standardized billing format. Examples of the billing formats are available from the CDOT Agreements Office.

(4) Local Agency (and any Consultant) shall comply with 23 C.F.R. 172.5(b) and (d) and use the CDOT procedures described in **Exhibit H** to administer the Consultant contract.

(5) Local Agency may expedite any CDOT approval of its procurement process and/or Consultant contract by submitting a letter to CDOT from the Local Agency's attorney/authorized representative certifying compliance with **Exhibit H** and 23 C.F.R. 172.5(b) and (d).

(6) Local Agency shall ensure that the Consultant contract complies with the requirements of 49 CFR 18.36(i) and contains the following language verbatim:

(a) The design work under this Agreement shall be compatible with the requirements of the contract between the Local Agency and the State (which is incorporated herein by this reference) for the design/construction of the project. The State is an intended third-party beneficiary of this agreement for that purpose.

(b) Upon advertisement of the project work for construction, the consultant shall make available services as requested by the State to assist the State in the evaluation of construction and the resolution of construction problems that may arise during the construction of the project.

(c) The consultant shall review the Construction Contractor's shop drawings for conformance with the contract documents and compliance with the provisions of the State's publication, Standard Specifications for Road and Bridge Construction, in connection with this work.

d) The State, in its sole discretion, may review construction plans, special provisions and estimates and may require the Local Agency to make such changes therein as the State determines necessary to comply with State and FHWA requirements.

iii. **Construction**

If the Work includes construction, the Local Agency shall perform the construction in accordance with the approved design plans and/or administer the construction in accordance with **Exhibit E**. Such administration shall include Work inspection and testing; approving sources of materials; performing required plant and shop inspections; documentation of contract payments, testing and inspection activities; preparing and approving pay estimates; preparing, approving and securing the funding for contract modification orders and minor contract revisions; processing Construction Contractor claims; construction supervision; and meeting the Quality Control requirements of the FHWA/CDOT Stewardship Agreement, as described in the Local Agency Contract Administration Checklist.

a) If the Local Agency is performing the Work, the State may, after providing written notice of the reason for the suspension to the Local Agency, suspend the Work, wholly or in part, due to the failure of the Local Agency or its Contractor to correct conditions which are unsafe for workers or for such periods as the State may deem necessary due to unsuitable weather, or for conditions considered unsuitable for the prosecution of the Work, or for any other condition or reason deemed by the State to be in the public interest.

b) The Local Agency shall be responsible for the following:

(1) Appointing a qualified professional engineer, licensed in the State of Colorado, as the Local Agency Project Engineer (LAPE), to perform engineering administration. The LAPE shall administer the Work in accordance with this Agreement, the requirements of the construction contract and applicable State procedures.

(2) For the construction of the Work, advertising the call for bids upon approval by the State and awarding the construction contract(s) to the low responsible bidder(s).

- (a) All advertising and bid awards, pursuant to this agreement, by the Local Agency shall comply with applicable requirements of 23 U.S.C. §112 and 23 C.F.R. Parts 633 and 635 and C.R.S. § 24-92-101 et seq. Those requirements include, without limitation, that the Local Agency and its Contractor shall incorporate Form 1273 (**Exhibit I**) in its entirety verbatim into any subcontract(s) for those services as terms and conditions therefor, as required by 23 C.F.R. 633.102(e).
 - (b) The Local Agency may accept or reject the proposal of the apparent low bidder for Work on which competitive bids have been received. The Local Agency must accept or reject such bid within three (3) working days after they are publicly opened.
 - (c) As part of accepting bid awards, the Local Agency shall provide additional funds, subject to their availability and appropriation, necessary to complete the Work if no additional federal-aid funds are available.
- (3) The requirements of this §6(D)(iii)(c)(2) also apply to any advertising and awards made by the State.
- (4) If all or part of the Work is to be accomplished by the Local Agency's personnel (i.e. by force account) rather than by a competitive bidding process, the Local Agency shall perform such work in accordance with pertinent State specifications and requirements of 23 C.F.R. 635, Subpart B, Force Account Construction.
- (a) Such Work will normally be based upon estimated quantities and firm unit prices agreed to between the Local Agency, the State and FHWA in advance of the Work, as provided for in 23 C.R.F. 635.204(c). Such agreed unit prices shall constitute a commitment as to the value of the Work to be performed.
 - (b) An alternative to the preceding subsection is that the Local Agency may agree to participate in the Work based on actual costs of labor, equipment rental, materials supplies and supervision necessary to complete the Work. Where actual costs are used, eligibility of cost items shall be evaluated for compliance with 48 C.F.R. Part 31.
 - (c) If the State provides matching funds under this Agreement, rental rates for publicly owned equipment shall be determined in accordance with the State's Standard Specifications for Road and Bridge Construction §109.04.
 - (d) All Work being paid under force account shall have prior approval of the State and/or FHWA and shall not be initiated until the State has issued a written notice to proceed.

E. State's Commitments

- a) The State will perform a final project inspection of the Work as a quality control/assurance activity. When all Work has been satisfactorily completed, the State will sign the FHWA Form 1212.
- b) Notwithstanding any consents or approvals given by the State for the Plans, the State shall not be liable or responsible in any manner for the structural design, details or construction of any major structures designed by, or that are the responsibility of, the Local Agency as identified in the Local Agency Contract Administration Checklist, Exhibit E,

F. ROW and Acquisition/Relocation

- a) If the Local Agency purchases a right of way for a State highway, including areas of influence, the Local Agency shall immediately convey title to such right of way to CDOT after the Local Agency obtains title.
- b) Any acquisition/relocation activities shall comply with all applicable federal and state statutes and regulations, including but not limited to the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 as amended and the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted

Programs as amended (49 C.F.R. Part 24), CDOT's Right of Way Manual, and CDOT's Policy and Procedural Directives.

c) The Parties' respective compliance responsibilities depend on the level of federal participation; provided however, that the State always retains Oversight responsibilities.

d) The Parties' respective responsibilities under each level in CDOT's Right of Way Manual (located at http://www.dot.state.co.us/ROW_Manual/) and reimbursement for the levels will be under the following categories:

- (1) Right of way acquisition (3111) for federal participation and non-participation;
- (2) Relocation activities, if applicable (3109);
- (3) Right of way incidentals, if applicable (expenses incidental to acquisition/relocation of right of way – 3114).

G. Utilities

If necessary, the Local Agency shall be responsible for obtaining the proper clearance or approval from any utility company which may become involved in the Work. Prior to the Work being advertised for bids, the Local Agency shall certify in writing to the State that all such clearances have been obtained.

a) Railroads

If the Work involves modification of a railroad company's facilities and such modification will be accomplished by the railroad company, the Local Agency shall make timely application to the Public Utilities commission requesting its order providing for the installation of the proposed improvements and not proceed with that part of the Work without compliance. The Local Agency shall also establish contact with the railroad company involved for the purpose of complying with applicable provisions of 23 C.F.R. 646, subpart B, concerning federal-aid projects involving railroad facilities and:

b) Execute an agreement setting out what work is to be accomplished and the location(s) thereof, and which costs shall be eligible for federal participation.

c) Obtain the railroad's detailed estimate of the cost of the Work.

d) Establish future maintenance responsibilities for the proposed installation.

e) Proscribe future use or dispositions of the proposed improvements in the event of abandonment or elimination of a grade crossing.

f) Establish future repair and/or replacement responsibilities in the event of accidental destruction or damage to the installation.

H. Environmental Obligations

The Local Agency shall perform all Work in accordance with the requirements of the current federal and state environmental regulations including the National Environmental Policy Act of 1969 (NEPA) as applicable.

I. Maintenance Obligations

The Local Agency shall maintain and operate the Work constructed under this Agreement at its own cost and expense during their useful life, in a manner satisfactory to the State and FHWA, and the Local Agency shall provide for such maintenance and operations obligations each year. Such maintenance and operations shall be conducted in accordance with all applicable statutes, ordinances and regulations pertaining to maintaining such improvements. The State and FHWA may make periodic inspections to verify that such improvements are being adequately maintained.

7. OPTION LETTER MODIFICATION

An option letter may be used to authorize the Local Agency to begin a phase without increasing total budgeted funds, increase or decrease the encumbrance amount as shown on **Exhibit C**, and/or transfer funds from one phase to another. Option letter modification is limited to the specific scenarios listed below. The option letter shall not be deemed valid until signed by the State Controller or an authorized delegate.

A. Option to begin a phase and/or increase or decrease the encumbrance amount

The State may authorize the Local Agency to begin a phase that may include Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous (this does not apply to Acquisition/Relocation or Railroads) as detailed in **Exhibit A** and at the same terms and conditions stated in the original Agreement, with the total budgeted funds as shown on **Exhibit C** remaining the same. The State may increase or decrease the encumbrance amount for a particular phase by replacing the original funding exhibit (**Exhibit C**) in the original Agreement with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc). The State may exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. If the State exercises this option, the Agreement will be considered to include this option provision.

B. Option to transfer funds from one phase to another phase

The State may permit the Local Agency to transfer funds from one phase (Design, Construction, Environmental, Utilities, ROW Incidentals or Miscellaneous) to another as a result of changes to state, federal, and local match. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The funds transferred from one phase to another are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**. Any transfer of funds from one phase to another is limited to an aggregate maximum of 24.99% of the original dollar amount of either phase affected by a transfer. A bilateral amendment is required for any transfer exceeding 24.99% of the original dollar amount of the phase affected by the increase or decrease.

C. Option to do both Options A and B

The State may authorize the Local Agency to begin a phase as detailed in **Exhibit A**, and encumber and transfer funds from one phase to another. The original funding exhibit (**Exhibit C**) in the original Agreement will be replaced with an updated **Exhibit C-1** (subsequent exhibits to **Exhibit C-1** shall be labeled **C-2, C-3**, etc.) and attached to the option letter. The addition of a phase and encumbrance and transfer of funds are subject to the same terms and conditions stated in the original Agreement with the total budgeted funds remaining the same. The State may unilaterally exercise this option by providing a fully executed option to the Local Agency within thirty (30) days before the initial targeted start date of the phase, in a form substantially equivalent to **Exhibit D**.

8. PAYMENTS

The State shall, in accordance with the provisions of this §8, pay the Local Agency in the amounts and using the methods set forth below:

A. Maximum Amount

The maximum amount payable is set forth in **Exhibit C** as determined by the State from available funds. Payments to the Local Agency are limited to the unpaid encumbered balance of the Agreement set forth in **Exhibit C**. The Local Agency shall provide its match share of the costs as evidenced by an appropriate ordinance/resolution or other authority letter which expressly authorizes the Local Agency the authority to enter into this Agreement and to expend its match share of the Work. A copy of such ordinance/resolution or authority letter is attached hereto as **Exhibit B**.

B. Payment

i. Advance, Interim and Final Payments

Any advance payment allowed under this Contract or in **Exhibit C** shall comply with State Fiscal Rules and be made in accordance with the provisions of this Contract or such Exhibit.

The Local Agency shall initiate any payment requests by submitting invoices to the State in the form and manner, approved by the State.

ii. Interest

The State shall fully pay each invoice within 45 days of receipt thereof if the amount invoiced represents performance by the Local Agency previously accepted by the State. Uncontested amounts not paid by the State within 45 days shall bear interest on the unpaid balance beginning on the 46th day at a rate not to exceed one percent per month until paid in full; provided, however, that interest shall not accrue on unpaid amounts that are subject to a good faith dispute. The Local Agency shall invoice the State separately for accrued interest on delinquent amounts. The billing shall reference the delinquent payment, the number of days interest to be paid and the interest rate.

iii. Available Funds-Contingency-Termination

The State is prohibited by law from making commitments beyond the term of the State's current fiscal year. Therefore, the Local Agency's compensation beyond the State's current Fiscal Year is contingent upon the continuing availability of State appropriations as provided in the Colorado Special Provisions. The State's performance hereunder is also contingent upon the continuing availability of federal funds. Payments pursuant to this Contract shall be made only from available funds encumbered for this Contract and the State's liability for such payments shall be limited to the amount remaining of such encumbered funds. If State or federal funds are not appropriated, or otherwise become unavailable to fund this Contract, the State may terminate this Contract immediately, in whole or in part, without further liability in accordance with the provisions hereof.

iv. Erroneous Payments

At the State's sole discretion, payments made to the Local Agency in error for any reason, including, but not limited to overpayments or improper payments, and unexpended or excess funds received by the Local Agency, may be recovered from the Local Agency by deduction from subsequent payments under this Contract or other contracts, Agreements or agreements between the State and the Local Agency or by other appropriate methods and collected as a debt due to the State. Such funds shall not be paid to any party other than the State.

C. Use of Funds

Contract Funds shall be used only for eligible costs identified herein.

D. Matching Funds

The Local Agency shall provide matching funds as provided in **§8.A.** and **Exhibit C.** The Local Agency shall have raised the full amount of matching funds prior to the Effective Date and shall report to the State regarding the status of such funds upon request. The Local Agency's obligation to pay all or any part of any matching funds, whether direct or contingent, only extend to funds duly and lawfully appropriated for the purposes of this Agreement by the authorized representatives of the Local Agency and paid into the Local Agency's treasury. The Local Agency represents to the State that the amount designated "Local Agency Matching Funds" in **Exhibit C** has been legally appropriated for the purpose of this Agreement by its authorized representatives and paid into its treasury. The Local Agency does not by this Agreement irrevocably pledge present cash reserves for payments in future fiscal years, and this Agreement is not intended to create a multiple-fiscal year debt of the Local Agency. The Local Agency shall not pay or be liable for any claimed interest, late charges, fees, taxes or penalties of any nature, except as required by the Local Agency's laws or policies.

E. Reimbursement of Local Agency Costs

The State shall reimburse the Local Agency's allowable costs, not exceeding the maximum total amount described in **Exhibit C** and **§8.** The applicable principles described in 49 C.F.R. 18 Subpart C and 49 C.F.R. 18.22 shall govern the State's obligation to reimburse all costs incurred by the Local Agency and submitted to the State for reimbursement hereunder, and the Local Agency shall comply with all such principles. The State shall reimburse the Local Agency for the federal-aid share of properly documented costs related to the Work after review and

approval thereof, subject to the provisions of this Agreement and **Exhibit C**. However, any costs incurred by the Local Agency prior to the date of FHWA authorization for the Work and prior to the Effective Date shall not be reimbursed absent specific FHWA and State Controller approval thereof. Costs shall be:

i. Reasonable and Necessary

Reasonable and necessary to accomplish the Work and for the Goods and Services provided.

ii. Net Cost

Actual net cost to the Local Agency (i.e. the price paid minus any items of value received by the Local Agency that reduce the cost actually incurred);

9. ACCOUNTING

The Local Agency shall establish and maintain accounting systems in accordance with generally accepted accounting standards (a separate set of accounts, or as a separate and integral part of its current accounting scheme). Such accounting systems shall, at a minimum, provide as follows:

A. Local Agency Performing the Work

If Local Agency is performing the Work, all allowable costs, including any approved services contributed by the Local Agency or others, shall be documented using payrolls, time records, invoices, contracts, vouchers, and other applicable records.

B. Local Agency-Checks or Draws

Checks issued or draws made by the Local Agency shall be made or drawn against properly signed vouchers detailing the purpose thereof. All checks, payrolls, invoices, contracts, vouchers, orders, and other accounting documents shall be on file in the office of the Local Agency, clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other Work documents.

C. State-Administrative Services

The State may perform any necessary administrative support services required hereunder. The Local Agency shall reimburse the State for the costs of any such services from the Budget as provided for in Exhibit C. If FHWA funding is not available or is withdrawn, or if the Local Agency terminates this Agreement prior to the Work being approved or completed, then all actual incurred costs of such services and assistance provided by the State shall be the Local Agency's sole expense.

D. Local Agency-Invoices

The Local Agency's invoices shall describe in detail the reimbursable costs incurred by the Local Agency for which it seeks reimbursement, the dates such costs were incurred and the amounts thereof, and shall not be submitted more often than monthly.

E. Invoicing Within 60 Days

The State shall not be liable to reimburse the Local Agency for any costs unless CDOT receives such invoices within 60 days after the date for which payment is requested, including final invoicing. Final payment to the Local Agency may be withheld at the discretion of the State until completion of final audit. Any costs incurred by the Local Agency that are not allowable under 49 C.F.R. 18 shall be reimbursed by the Local Agency, or the State may offset them against any payments due from the State to the Local Agency.

F. Reimbursement of State Costs

CDOT shall perform Oversight and the Local Agency shall reimburse CDOT for its related costs. The Local Agency shall pay invoices within 60 days after receipt thereof. If the Local Agency fails to remit payment within 60 days, at CDOT's request, the State is authorized to withhold an equal amount from future apportionment due the Local Agency from the Highway Users Tax Fund and to pay such funds directly to CDOT. Interim funds shall be payable from the State Highway Supplementary Fund (400) until CDOT is reimbursed. If the Local Agency fails to make payment within 60 days, it shall pay interest to the State at a rate of one percent per month on the delinquent amounts until the billing is paid in full. CDOT's invoices shall describe in detail the reimbursable costs incurred, the dates incurred and the amounts thereof, and shall not be submitted more often than monthly.

10. REPORTING - NOTIFICATION

Reports, Evaluations, and Reviews required under this §10 shall be in accordance with the procedures of and in such form as prescribed by the State and in accordance with §18, if applicable.

A. Performance, Progress, Personnel, and Funds

The Local Agency shall submit a report to the State upon expiration or sooner termination of this Agreement, containing an Evaluation and Review of the Local Agency's performance and the final status of the Local Agency's obligations hereunder.

B. Litigation Reporting

Within 10 days after being served with any pleading related to this Agreement, in a legal action filed with a court or administrative agency, the Local Agency shall notify the State of such action and deliver copies of such pleadings to the State's principal representative as identified herein. If the State or its principal representative is not then serving, such notice and copies shall be delivered to the Executive Director of CDOT.

C. Noncompliance

The Local Agency's failure to provide reports and notify the State in a timely manner in accordance with this §10 may result in the delay of payment of funds and/or termination as provided under this Agreement.

D. Documents

Upon request by the State, the Local Agency shall provide the State, or its authorized representative, copies of all documents, including contracts and subcontracts, in its possession related to the Work.

11. LOCAL AGENCY RECORDS

A. Maintenance

The Local Agency shall make, keep, maintain, and allow inspection and monitoring by the State of a complete file of all records, documents, communications, notes and other written materials, electronic media files, and communications, pertaining in any manner to the Work or the delivery of Services (including, but not limited to the operation of programs) or Goods hereunder. The Local Agency shall maintain such records until the last to occur of the following: (i) a period of three years after the date this Agreement is completed or terminated, or (ii) three years after final payment is made hereunder, whichever is later, or (iii) for such further period as may be necessary to resolve any pending matters, or (iv) if an audit is occurring, or the Local Agency has received notice that an audit is pending, then until such audit has been completed and its findings have been resolved (collectively, the "Record Retention Period").

B. Inspection

The Local Agency shall permit the State, the federal government and any other duly authorized agent of a governmental agency to audit, inspect, examine, excerpt, copy and/or transcribe the Local Agency's records related to this Agreement during the Record Retention Period to assure compliance with the terms hereof or to evaluate the Local Agency's performance hereunder. The State reserves the right to inspect the Work at all reasonable times and places during the term of this Agreement, including any extension. If the Work fails to conform to the requirements of this Agreement, the State may require the Local Agency promptly to bring the Work into conformity with Agreement requirements, at the Local Agency's sole expense. If the Work cannot be brought into conformance by re-performance or other corrective measures, the State may require the Local Agency to take necessary action to ensure that future performance conforms to Agreement requirements and may exercise the remedies available under this Agreement at law or in equity in lieu of or in conjunction with such corrective measures.

C. Monitoring

The Local Agency also shall permit the State, the federal government or any other duly authorized agent of a governmental agency, in their sole discretion, to monitor all activities conducted by the Local Agency pursuant to the terms of this Agreement using any reasonable procedure, including, but not limited to: internal evaluation procedures, examination of program

data, special analyses, on-site checking, formal audit examinations, or any other procedures. All such monitoring shall be performed in a manner that shall not unduly interfere with the Local Agency's performance hereunder.

D. Final Audit Report

If an audit is performed on the Local Agency's records for any fiscal year covering a portion of the term of this Agreement, the Local Agency shall submit a copy of the final audit report to the State or its principal representative at the address specified herein.

12. CONFIDENTIAL INFORMATION-STATE RECORDS

The Local Agency shall comply with the provisions of this §12 if it becomes privy to confidential information in connection with its performance hereunder. Confidential information, includes, but is not necessarily limited to, state records, personnel records, and information concerning individuals. Nothing in this §12 shall be construed to require the Local Agency to violate the Colorado Open Records Act, C.R.S. §§ 24-72-1001 et seq.

A. Confidentiality

The Local Agency shall keep all State records and information confidential at all times and to comply with all laws and regulations concerning confidentiality of information. Any request or demand by a third party for State records and information in the possession of the Local Agency shall be immediately forwarded to the State's principal representative.

B. Notification

The Local Agency shall notify its agents, employees and assigns who may come into contact with State records and confidential information that each is subject to the confidentiality requirements set forth herein, and shall provide each with a written explanation of such requirements before they are permitted to access such records and information.

C. Use, Security, and Retention

Confidential information of any kind shall not be distributed or sold to any third party or used by the Local Agency or its agents in any way, except as authorized by the Agreement and as approved by the State. The Local Agency shall provide and maintain a secure environment that ensures confidentiality of all State records and other confidential information wherever located. Confidential information shall not be retained in any files or otherwise by the Local Agency or its agents, except as set forth in this Agreement and approved by the State.

D. Disclosure-Liability

Disclosure of State records or other confidential information by the Local Agency for any reason may be cause for legal action by third parties against the Local Agency, the State or their respective agents. The Local Agency is prohibited from providing indemnification to the State pursuant to the Constitution of the State of Colorado, Article XI, Section 1, however, the Local Agency shall be responsible for any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, or assignees pursuant to this §12.

13. CONFLICT OF INTEREST

The Local Agency shall not engage in any business or personal activities or practices or maintain any relationships which conflict in any way with the full performance of the Local Agency's obligations hereunder. The Local Agency acknowledges that with respect to this Agreement even the appearance of a conflict of interest is harmful to the State's interests. Absent the State's prior written approval, the Local Agency shall refrain from any practices, activities or relationships that reasonably appear to be in conflict with the full performance of the Local Agency's obligations to the State hereunder. If a conflict or appearance exists, or if the Local Agency is uncertain whether a conflict or the appearance of a conflict of interest exists, the Local Agency shall submit to the State a disclosure statement setting forth the relevant details for the State's consideration. Failure to promptly submit a disclosure statement or to follow the State's direction in regard to the apparent conflict constitutes a breach of this Agreement.

14. REPRESENTATIONS AND WARRANTIES

The Local Agency makes the following specific representations and warranties, each of which was relied on by the State in entering into this Agreement.

A. Standard and Manner of Performance

The Local Agency shall perform its obligations hereunder, including in accordance with the highest professional standard of care, skill and diligence and in the sequence and manner set forth in this Agreement.

B. Legal Authority – The Local Agency and the Local Agency’s Signatory

The Local Agency warrants that it possesses the legal authority to enter into this Agreement and that it has taken all actions required by its procedures, by-laws, and/or applicable laws to exercise that authority, and to lawfully authorize its undersigned signatory to execute this Agreement, or any part thereof, and to bind the Local Agency to its terms. If requested by the State, the Local Agency shall provide the State with proof of the Local Agency’s authority to enter into this Agreement within 15 days of receiving such request.

C. Licenses, Permits, Etc.

The Local Agency represents and warrants that as of the Effective Date it has, and that at all times during the term hereof it shall have, at its sole expense, all licenses, certifications, approvals, insurance, permits, and other authorization required by law to perform its obligations hereunder. The Local Agency warrants that it shall maintain all necessary licenses, certifications, approvals, insurance, permits, and other authorizations required to properly perform this Agreement, without reimbursement by the State or other adjustment in Agreement Funds. Additionally, all employees and agents of the Local Agency performing Services under this Agreement shall hold all required licenses or certifications, if any, to perform their responsibilities. The Local Agency, if a foreign corporation or other foreign entity transacting business in the State of Colorado, further warrants that it currently has obtained and shall maintain any applicable certificate of authority to transact business in the State of Colorado and has designated a registered agent in Colorado to accept service of process. Any revocation, withdrawal or non-renewal of licenses, certifications, approvals, insurance, permits or any such similar requirements necessary for the Local Agency to properly perform the terms of this Agreement shall be deemed to be a material breach by the Local Agency and constitute grounds for termination of this Agreement.

15. INSURANCE

The Local Agency and its contractors shall obtain and maintain insurance as specified in this section at all times during the term of this Agreement: All policies evidencing the insurance coverage required hereunder shall be issued by insurance companies satisfactory to the Local Agency and the State.

A. The Local Agency

i. Public Entities

If the Local Agency is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended (the "GIA"), then the Local Agency shall maintain at all times during the term of this Agreement such liability insurance, by commercial policy or self-insurance, as is necessary to meet its liabilities under the GIA. The Local Agency shall show proof of such insurance satisfactory to the State, if requested by the State. The Local Agency shall require each Agreement with their Consultant and Contractor, that are providing Goods or Services hereunder, to include the insurance requirements necessary to meet Consultant or Contractor liabilities under the GIA.

ii. Non-Public Entities

If the Local Agency is not a "public entity" within the meaning of the Governmental Immunity Act, the Local Agency shall obtain and maintain during the term of this Agreement insurance coverage and policies meeting the same requirements set forth in §15(B) with respect to subcontractors that are not "public entities".

B. Contractors

The Local Agency shall require each contract with Contractors, Subcontractors, or Consultants, other than those that are public entities, providing Goods or Services in connection with this Agreement, to include insurance requirements substantially similar to the following:

i. Worker's Compensation

Worker's Compensation Insurance as required by State statute, and Employer's Liability Insurance covering all of the Local Agency's Contractors, Subcontractors, or Consultant's employees acting within the course and scope of their employment.

ii. General Liability

Commercial General Liability Insurance written on ISO occurrence form CG 00 01 10/93 or equivalent, covering premises operations, fire damage, independent contractors, products and completed operations, blanket liability, personal injury, and advertising liability with minimum limits as follows: (a) \$1,000,000 each occurrence; (b) \$1,000,000 general aggregate; (c) \$1,000,000 products and completed operations aggregate; and (d) \$50,000 any one fire. If any aggregate limit is reduced below \$1,000,000 because of claims made or paid, contractors, subcontractors, and consultants shall immediately obtain additional insurance to restore the full aggregate limit and furnish to the Local Agency a certificate or other document satisfactory to the Local Agency showing compliance with this provision.

iii. Automobile Liability

Automobile Liability Insurance covering any auto (including owned, hired and non-owned autos) with a minimum limit of \$1,000,000 each accident combined single limit.

iv. Additional Insured

The Local Agency and the State shall be named as additional insured on the Commercial General Liability policies (leases and construction contracts require additional insured coverage for completed operations on endorsements CG 2010 11/85, CG 2037, or equivalent).

v. Primacy of Coverage

Coverage required of the Consultants or Contractors shall be primary over any insurance or self-insurance program carried by the Local Agency or the State.

vi. Cancellation

The above insurance policies shall include provisions preventing cancellation or non-renewal without at least 45 days prior notice to the Local Agency and the State by certified mail.

vii. Subrogation Waiver

All insurance policies in any way related to this Agreement and secured and maintained by the Local Agency's Consultants or Contractors as required herein shall include clauses stating that each carrier shall waive all rights of recovery, under subrogation or otherwise, against the Local Agency or the State, its agencies, institutions, organizations, officers, agents, employees, and volunteers.

C. Certificates

The Local Agency shall provide certificates showing insurance coverage required hereunder to the State within seven business days of the Effective Date of this Agreement. All Contractors, Subcontractors, or Consultants shall provide certificates showing insurance coverage required hereunder to the Local Agency 5 business days prior to work commencing by the Contractor, Subcontractors, or Consultants. No later than 15 days prior to the expiration date of any such coverage, the Local Agency and each Contractor, Subcontractor, or Consultant shall deliver to the State or the Local Agency certificate of insurance evidencing renewals thereof. In addition, upon request by the State at any other time during the term of this Agreement or any sub-contract, the Local Agency and each Contractor, Subcontractor, or Consultant shall, within 10 days of such request, supply to the State evidence satisfactory to the State of compliance with the provision of this §15.

16. DEFAULT-BREACH

A. Defined

In addition to any breaches specified in other sections of this Agreement, the failure of either Party to perform any of its material obligations hereunder in whole or in part or in a timely or satisfactory manner constitutes a breach.

B. Notice and Cure Period

In the event of a breach, notice of such shall be given in writing by the aggrieved Party to the other Party in the manner provided in §18. If such breach is not cured within 30 days of receipt of written notice, or if a cure cannot be completed within 30 days, or if cure of the breach has not begun within 30 days and pursued with due diligence, the State may exercise any of the remedies set forth in §17. Notwithstanding anything to the contrary herein, the State, in its sole discretion, need not provide advance notice or a cure period and may immediately terminate this Agreement in whole or in part if reasonably necessary to preserve public safety or to prevent immediate public crisis.

17. REMEDIES

If the Local Agency is in breach under any provision of this Agreement, the State shall have all of the remedies listed in this §17 in addition to all other remedies set forth in other sections of this Agreement following the notice and cure period set forth in §16(B). The State may exercise any or all of the remedies available to it, in its sole discretion, concurrently or consecutively.

A. Termination for Cause and/or Breach

If the Local Agency fails to perform any of its obligations hereunder with such diligence as is required to ensure its completion in accordance with the provisions of this Agreement and in a timely manner, the State may notify the Local Agency of such non-performance in accordance with the provisions herein. If the Local Agency thereafter fails to promptly cure such non-performance within the cure period, the State, at its option, may terminate this entire Agreement or such part of this Agreement as to which there has been delay or a failure to properly perform. Exercise by the State of this right shall not be deemed a breach of its obligations hereunder. The Local Agency shall continue performance of this Agreement to the extent not terminated, if any.

i. Obligations and Rights

To the extent specified in any termination notice, the Local Agency shall not incur further obligations or render further performance hereunder past the effective date of such notice, and shall terminate outstanding orders and sub-Agreements with third parties. However, the Local Agency shall complete and deliver to the State all Work, Services and Goods not cancelled by the termination notice and may incur obligations as are necessary to do so within this Agreement's terms. At the sole discretion of the State, the Local Agency shall assign to the State all of the Local Agency's right, title, and interest under such terminated orders or sub-Agreements. Upon termination, the Local Agency shall take timely, reasonable and necessary action to protect and preserve property in the possession of the Local Agency in which the State has an interest. All materials owned by the State in the possession of the Local Agency shall be immediately returned to the State. All Work Product, at the option of the State, shall be delivered by the Local Agency to the State and shall become the State's property.

ii. Payments

The State shall reimburse the Local Agency only for accepted performance received up to the date of termination. If, after termination by the State, it is determined that the Local Agency was not in default or that the Local Agency's action or inaction was excusable, such termination shall be treated as a termination in the public interest and the rights and obligations of the Parties shall be the same as if this Agreement had been terminated in the public interest, as described herein.

iii. Damages and Withholding

Notwithstanding any other remedial action by the State, the Local Agency also shall remain liable to the State for any damages sustained by the State by virtue of any breach under this

Agreement by the Local Agency and the State may withhold any payment to the Local Agency for the purpose of mitigating the State's damages, until such time as the exact amount of damages due to the State from the Local Agency is determined. The State may withhold any amount that may be due to the Local Agency as the State deems necessary to protect the State, including loss as a result of outstanding liens or claims of former lien holders, or to reimburse the State for the excess costs incurred in procuring similar goods or services. The Local Agency shall be liable for excess costs incurred by the State in procuring from third parties replacement Work, Services or substitute Goods as cover.

B. Early Termination in the Public Interest

The State is entering into this Agreement for the purpose of carrying out the public policy of the State of Colorado, as determined by its Governor, General Assembly, and/or Courts. If this Agreement ceases to further the public policy of the State, the State, in its sole discretion, may terminate this Agreement in whole or in part. Exercise by the State of this right shall not constitute a breach of the State's obligations hereunder. This subsection shall not apply to a termination of this Agreement by the State for cause or breach by the Local Agency, which shall be governed by §17(A) or as otherwise specifically provided for herein.

i. Method and Content

The State shall notify the Local Agency of the termination in accordance with §18, specifying the effective date of the termination and whether it affects all or a portion of this Agreement.

ii. Obligations and Rights

Upon receipt of a termination notice, the Local Agency shall be subject to and comply with the same obligations and rights set forth in §17(A)(i).

iii. Payments

If this Agreement is terminated by the State pursuant to this §17(B), the Local Agency shall be paid an amount which bears the same ratio to the total reimbursement under this Agreement as the Services satisfactorily performed bear to the total Services covered by this Agreement, less payments previously made. Additionally, if this Agreement is less than 60% completed, the State may reimburse the Local Agency for a portion of actual out-of-pocket expenses (not otherwise reimbursed under this Agreement) incurred by the Local Agency which are directly attributable to the uncompleted portion of the Local Agency's obligations hereunder; provided that the sum of any and all reimbursement shall not exceed the maximum amount payable to the Local Agency hereunder.

C. Remedies Not Involving Termination

The State, in its sole discretion, may exercise one or more of the following remedies in addition to other remedies available to it:

i. Suspend Performance

Suspend the Local Agency's performance with respect to all or any portion of this Agreement pending necessary corrective action as specified by the State without entitling the Local Agency to an adjustment in price/cost or performance schedule. The Local Agency shall promptly cease performance and incurring costs in accordance with the State's directive and the State shall not be liable for costs incurred by the Local Agency after the suspension of performance under this provision.

ii. Withhold Payment

Withhold payment to the Local Agency until corrections in the Local Agency's performance are satisfactorily made and completed.

iii. Deny Payment

Deny payment for those obligations not performed that due to the Local Agency's actions or inactions cannot be performed or, if performed, would be of no value to the State; provided that any denial of payment shall be reasonably related to the value to the State of the obligations not performed.

iv. Removal

Demand removal of any of the Local Agency's employees, agents, or contractors whom the State deems incompetent, careless, insubordinate, unsuitable, or otherwise unacceptable, or

whose continued relation to this Agreement is deemed to be contrary to the public interest or not in the State's best interest.

v. Intellectual Property

If the Local Agency infringes on a patent, copyright, trademark, trade secret or other intellectual property right while performing its obligations under this Agreement, the Local Agency shall, at the State's option (a) obtain for the State or the Local Agency the right to use such products and services; (b) replace any Goods, Services, or other product involved with non-infringing products or modify them so that they become non-infringing; or, (c) if neither of the foregoing alternatives are reasonably available, remove any infringing Goods, Services, or products and refund the price paid therefore to the State.

18. NOTICES and REPRESENTATIVES

Each individual identified below is the principal representative of the designating Party. All notices required to be given hereunder shall be hand delivered with receipt required or sent by certified or registered mail to such Party's principal representative at the address set forth below. In addition to but not in lieu of a hard-copy notice, notice also may be sent by e-mail to the e-mail addresses, if any, set forth below. Either Party may from time to time designate by written notice substitute addresses or persons to whom such notices shall be sent. Unless otherwise provided herein, all notices shall be effective upon receipt.

A. State:

Lesley Mace
CDOT Region 2 – Project Manager
1480 Quail Lake Loop
Colorado Springs, CO 80906
(719) 227-3249

B. Local Agency:

Aaron Egbert
City of Colorado Springs
PO Box 1575,
Mail Code 435
Colorado Springs, CO 80903
(719) 385-5465

19. RIGHTS IN DATA, DOCUMENTS, AND COMPUTER SOFTWARE

Any software, research, reports, studies, data, photographs, negatives or other documents, drawings, models, materials, or work product of any type, including drafts, prepared by the Local Agency in the performance of its obligations under this Agreement shall be the exclusive property of the State and all Work Product shall be delivered to the State by the Local Agency upon completion or termination hereof. The State's exclusive rights in such Work Product shall include, but not be limited to, the right to copy, publish, display, transfer, and prepare derivative works. The Local Agency shall not use, willingly allow, cause or permit such Work Product to be used for any purpose other than the performance of the Local Agency's obligations hereunder without the prior written consent of the State.

20. GOVERNMENTAL IMMUNITY

Notwithstanding any other provision to the contrary, nothing herein shall constitute a waiver, express or implied, of any of the immunities, rights, benefits, protection, or other provisions of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., as amended. Liability for claims for injuries to persons or property arising from the negligence of the State of Colorado, its departments, institutions, agencies, boards, officials, and employees and of the Local Agency is controlled and limited by the provisions of the Governmental Immunity Act and the risk management statutes, CRS §24-30-1501, et seq., as amended.

21. STATEWIDE CONTRACT MANAGEMENT SYSTEM

If the maximum amount payable to the Local Agency under this Agreement is \$100,000 or greater, either on the Effective Date or at anytime thereafter, this **§21** applies.

The Local Agency agrees to be governed, and to abide, by the provisions of CRS §24-102-205, §24-102-206, §24-103-601, §24-103.5-101 and §24-105-102 concerning the monitoring of vendor performance on state agreements/contracts and inclusion of agreement/contract performance information in a statewide contract management system.

The Local Agency's performance shall be subject to Evaluation and Review in accordance with the terms and conditions of this Agreement, State law, including CRS §24-103.5-101, and State Fiscal Rules, Policies and Guidance. Evaluation and Review of the Local Agency's performance shall be part of the normal Agreement administration process and the Local Agency's performance will be systematically recorded in the statewide Agreement Management System. Areas of Evaluation and Review shall include, but shall not be limited to quality, cost and timeliness. Collection of information relevant to the performance of the Local Agency's obligations under this Agreement shall be determined by the specific requirements of such obligations and shall include factors tailored to match the requirements of the Local Agency's obligations. Such performance information shall be entered into the statewide Contract Management System at intervals established herein and a final Evaluation, Review and Rating shall be rendered within 30 days of the end of the Agreement term. The Local Agency shall be notified following each performance Evaluation and Review, and shall address or correct any identified problem in a timely manner and maintain work progress.

Should the final performance Evaluation and Review determine that the Local Agency demonstrated a gross failure to meet the performance measures established hereunder, the Executive Director of the Colorado Department of Personnel and Administration (Executive Director), upon request by CDOT, and showing of good cause, may debar the Local Agency and prohibit the Local Agency from bidding on future Agreements. The Local Agency may contest the final Evaluation, Review and Rating by: (a) filing rebuttal statements, which may result in either removal or correction of the evaluation (CRS §24-105-102(6)), or (b) under CRS §24-105-102(6), exercising the debarment protest and appeal rights provided in CRS §§24-109-106, 107, 201 or 202, which may result in the reversal of the debarment and reinstatement of the Local Agency, by the Executive Director, upon showing of good cause.

22. FEDERAL REQUIREMENTS

The Local Agency and/or their contractors, subcontractors, and consultants shall at all times during the execution of this Agreement strictly adhere to, and comply with, all applicable federal and state laws, and their implementing regulations, as they currently exist and may hereafter be amended. A listing of certain federal and state laws that may be applicable are described in **Exhibit I, Exhibit J and Exhibit K**.

23. DISADVANTAGED BUSINESS ENTERPRISE (DBE)

The Local Agency will comply with all requirements of **Exhibit G** and the Local Agency Contract Administration Checklist regarding DBE requirements for the Work, except that if the Local Agency desires to use its own DBE program to implement and administer the DBE provisions of 49 C.F.R. Part 26 under this Agreement, it must submit a copy of its program's requirements to the State for review and approval before the execution of this Agreement. If the Local Agency uses any State-approved DBE program for this Agreement, the Local Agency shall be solely responsible to defend that DBE program and its use of that program against all legal and other challenges or complaints, at its sole cost and expense. Such responsibility includes, without limitation, determinations concerning DBE eligibility requirements and certification, adequate legal and factual bases for DBE goals and good faith efforts. State approval (if provided) of the Local Agency's DBE program does not waive or modify the sole responsibility of the Local Agency for use of its program.

24. DISPUTES

Except as otherwise provided in this Agreement, any dispute concerning a question of fact arising under this Agreement which is not disposed of by agreement shall be decided by the Chief Engineer

of the Department of Transportation. The decision of the Chief Engineer will be final and conclusive unless, within 30 calendar days after the date of receipt of a copy of such written decision, the Local Agency mails or otherwise furnishes to the State a written appeal addressed to the Executive Director of CDOT. In connection with any appeal proceeding under this clause, the Local Agency shall be afforded an opportunity to be heard and to offer evidence in support of its appeal. Pending final decision of a dispute hereunder, the Local Agency shall proceed diligently with the performance of this Agreement in accordance with the Chief Engineer's decision. The decision of the Executive Director or his duly authorized representative for the determination of such appeals shall be final and conclusive and serve as final agency action. This dispute clause does not preclude consideration of questions of law in connection with decisions provided for herein. Nothing in this Agreement, however, shall be construed as making final the decision of any administrative official, representative, or board on a question of law.

25. GENERAL PROVISIONS

A. Assignment

The Local Agency's rights and obligations hereunder are personal and may not be transferred, assigned or subcontracted without the prior written consent of the State. Any attempt at assignment, transfer, or subcontracting without such consent shall be void. All assignments and subcontracts approved by the Local Agency or the State are subject to all of the provisions hereof. The Local Agency shall be solely responsible for all aspects of subcontracting arrangements and performance.

B. Binding Effect

Except as otherwise provided in **§25(A)**, all provisions herein contained, including the benefits and burdens, shall extend to and be binding upon the Parties' respective heirs, legal representatives, successors, and assigns.

C. Captions

The captions and headings in this Agreement are for convenience of reference only, and shall not be used to interpret, define, or limit its provisions.

D. Counterparts

This Agreement may be executed in multiple identical original counterparts, all of which shall constitute one agreement.

E. Entire Understanding

This Agreement represents the complete integration of all understandings between the Parties and all prior representations and understandings, oral or written, are merged herein. Prior or contemporaneous addition, deletion, or other amendment hereto shall not have any force or affect whatsoever, unless embodied herein.

F. Indemnification - General

If Local Agency is not a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq., the Local Agency shall indemnify, save, and hold harmless the State, its employees and agents, against any and all claims, damages, liability and court awards including costs, expenses, and attorney fees and related costs, incurred as a result of any act or omission by the Local Agency, or its employees, agents, subcontractors or assignees pursuant to the terms of this Agreement. This clause is not applicable to a Local Agency that is a "public entity" within the meaning of the Colorado Governmental Immunity Act, CRS §24-10-101, et seq.

G. Jurisdiction and Venue

All suits, actions, or proceedings related to this Agreement shall be held in the State of Colorado and exclusive venue shall be in the City and County of Denver.

H. Limitations of Liability

Any and all limitations of liability and/or damages in favor of the Local Agency contained in any document attached to and/or incorporated by reference into this Agreement, whether referred to as an exhibit, attachment, schedule, or any other name, are void and of no effect. This includes,

but is not necessarily limited to, limitations on (i) the types of liabilities, (ii) the types of damages, (iii) the amount of damages, and (iv) the source of payment for damages.

I. Modification

i. By the Parties

Except as specifically provided in this Agreement, modifications of this Agreement shall not be effective unless agreed to in writing by both parties in an amendment to this Agreement, properly executed and approved in accordance with applicable Colorado State law, State Fiscal Rules, and Office of the State Controller Policies, including, but not limited to, the policy entitled MODIFICATIONS OF AGREEMENTS - TOOLS AND FORMS.

ii. By Operation of Law

This Agreement is subject to such modifications as may be required by changes in Federal or Colorado State law, or their implementing regulations. Any such required modification automatically shall be incorporated into and be part of this Agreement on the effective date of such change, as if fully set forth herein.

J. Order of Precedence

The provisions of this Agreement shall govern the relationship of the State and the Local Agency. In the event of conflicts or inconsistencies between this Agreement and its exhibits and attachments, such conflicts or inconsistencies shall be resolved by reference to the documents in the following order of priority:

- i. Colorado Special Provisions,
- ii. The provisions of the main body of this Agreement,
- iii. **Exhibit A** (Scope of Work),
- iv. **Exhibit B** (Local Agency Resolution),
- v. **Exhibit C** (Funding Provisions),
- vi. **Exhibit D** (Option Letter),
- vii. **Exhibit E** (Local Agency Contract Administration Checklist),
- viii. Other exhibits in descending order of their attachment.

K. Severability

Provided this Agreement can be executed and performance of the obligations of the Parties accomplished within its intent, the provisions hereof are severable and any provision that is declared invalid or becomes inoperable for any reason shall not affect the validity of any other provision hereof.

L. Survival of Certain Agreement Terms

Notwithstanding anything herein to the contrary, provisions of this Agreement requiring continued performance, compliance, or effect after termination hereof, shall survive such termination and shall be enforceable by the State if the Local Agency fails to perform or comply as required.

M. Taxes

The State is exempt from all federal excise taxes under IRC Chapter 32 (No. 84-730123K) and from all State and local government sales and use taxes under CRS §§39-26-101 and 201 et seq. Such exemptions apply when materials are purchased or services rendered to benefit the State; provided however, that certain political subdivisions (e.g., City of Denver) may require payment of sales or use taxes even though the product or service is provided to the State. The Local Agency shall be solely liable for paying such taxes as the State is prohibited from paying for or reimbursing the Local Agency for them.

N. Third Party Beneficiaries

Enforcement of this Agreement and all rights and obligations hereunder are reserved solely to the Parties, and not to any third party. Any services or benefits which third parties receive as a result of this Agreement are incidental to the Agreement, and do not create any rights for such third parties.

O. Waiver

Waiver of any breach of a term, provision, or requirement of this Agreement, or any right or remedy hereunder, whether explicitly or by lack of enforcement, shall not be construed or deemed as a waiver of any subsequent breach of such term, provision or requirement, or of any other term, provision, or requirement.

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26. COLORADO SPECIAL PROVISIONS

The Special Provisions apply to all Agreements except where noted in italics.

1. CONTROLLER'S APPROVAL. CRS §24-30-202 (1).

This Agreement shall not be deemed valid until it has been approved by the Colorado State Controller or designee.

2. FUND AVAILABILITY. CRS §24-30-202(5.5).

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

3. GOVERNMENTAL IMMUNITY.

No term or condition of this Agreement shall be construed or interpreted as a waiver, express or implied, of any of the immunities, rights, benefits, protections, or other provisions, of the Colorado Governmental Immunity Act, CRS §24-10-101 et seq., or the Federal Tort Claims Act, 28 U.S.C. §§1346(b) and 2671 et seq., as applicable now or hereafter amended.

4. INDEPENDENT CONTRACTOR.

The Local Agency shall perform its duties hereunder as an independent contractor and not as an employee. Neither The Local Agency nor any agent or employee of The Local Agency shall be deemed to be an agent or employee of the State. The Local Agency and its employees and agents are not entitled to unemployment insurance or workers compensation benefits through the State and the State shall not pay for or otherwise provide such coverage for The Local Agency or any of its agents or employees.

Unemployment insurance benefits shall be available to The Local Agency and its employees and agents only if such coverage is made available by The Local Agency or a third party. The Local Agency shall pay when due all applicable employment taxes and income taxes and local head taxes incurred pursuant to this Agreement. The Local Agency shall not have authorization, express or implied, to bind the State to any Agreement, liability or understanding, except as expressly set forth herein. The Local Agency shall (a) provide and keep in force workers' compensation and unemployment compensation insurance in the amounts required by law, (b) provide proof thereof when requested by the State, and (c) be solely responsible for its acts and those of its employees and agents.

5. COMPLIANCE WITH LAW.

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

6. CHOICE OF LAW.

Colorado law, and rules and regulations issued pursuant thereto, shall be applied in the interpretation, execution, and enforcement of this Agreement. Any provision included or incorporated herein by reference which conflicts with said laws, rules, and regulations shall be null and void. Any provision incorporated herein by reference which purports to negate this or any other Special Provision in whole or in part shall not be valid or enforceable or available in any action at law, whether by way of complaint, defense, or otherwise. Any provision rendered null and void by the operation of this provision shall not invalidate the remainder of this Agreement, to the extent capable of execution.

7. BINDING ARBITRATION PROHIBITED.

The State of Colorado does not agree to binding arbitration by any extra-judicial body or person. Any provision to the contrary in this contract or incorporated herein by reference shall be null and void.

8. SOFTWARE PIRACY PROHIBITION. Governor's Executive Order D 002 00.

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

9. EMPLOYEE FINANCIAL INTEREST. CRS §§24-18-201 and 24-50-507.

The signatories aver that to their knowledge, no employee of the State has any personal or beneficial interest whatsoever in the service or property described in this Agreement. The Local Agency has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree

with the performance of The Local Agency's services and The Local Agency shall not employ any person having such known interests.

10. VENDOR OFFSET. CRS §§24-30-202 (1) and 24-30-202.4.

[Not Applicable to intergovernmental agreements] Subject to CRS §24-30-202.4 (3.5), the State Controller may withhold payment under the State's vendor offset intercept system for debts owed to State agencies for: (a) unpaid child support debts or child support arrearages; (b) unpaid balances of tax, accrued interest, or other charges specified in CRS §39-21-101, et seq.; (c) unpaid loans due to the Student Loan Division of the Department of Higher Education; (d) amounts required to be paid to the Unemployment Compensation Fund; and (e) other unpaid debts owing to the State as a result of final agency determination or judicial action.

11. PUBLIC CONTRACTS FOR SERVICES. CRS §8-17.5-101.

[Not Applicable to Agreements relating to the offer, issuance, or sale of securities, investment advisory services or fund management services, sponsored projects, intergovernmental Agreements, or information technology services or products and services] The Local Agency certifies, warrants, and agrees that it does not knowingly employ or contract with an illegal alien who shall perform work under this Agreement and shall confirm the employment eligibility of all employees who are newly hired for employment in the United States to perform work under this Agreement, through participation in the E-Verify Program or the State program established pursuant to CRS §8-17.5-102(5)(c). The Local Agency shall not knowingly employ or contract with an illegal alien to perform work under this Agreement or enter into a contract with a subcontractor that fails to certify to The Local Agency that the subcontractor shall not knowingly employ or contract with an illegal alien to perform work under this Agreement. The Local Agency (a) shall not use E-Verify Program or State program procedures to undertake pre-employment screening of job applicants while this Agreement is being performed, (b) shall notify the subcontractor and the contracting State agency within three days if The Local Agency has actual knowledge that a subcontractor is employing or contracting with an illegal alien for work under this Agreement, (c) shall terminate the subcontract if a subcontractor does not stop employing or contracting with the illegal alien within three days of receiving the notice, and (d) shall comply with reasonable requests made in the course of an investigation, undertaken pursuant to CRS §8-17.5-102(5), by the Colorado Department of Labor and Employment. If The Local Agency participates in the State program, The Local Agency shall deliver to the contracting State agency, Institution of Higher Education or political subdivision, a written, notarized affirmation, affirming that The Local Agency has examined the legal work status of such employee, and shall comply with all of the other requirements of the State program. If The Local Agency fails to comply with any requirement of this provision or CRS §8-17.5-101 et seq., the contracting State agency, institution of higher education or political subdivision may terminate this Agreement for breach and, if so terminated, The Local Agency shall be liable for damages.

12. PUBLIC CONTRACTS WITH NATURAL PERSONS. CRS §24-76.5-101.

The Local Agency, if a natural person eighteen (18) years of age or older, hereby swears and affirms under penalty of perjury that he or she (a) is a citizen or otherwise lawfully present in the United States pursuant to federal law, (b) shall comply with the provisions of CRS §24-76.5-101 et seq., and (c) has produced one form of identification required by CRS §24-76.5-103 prior to the effective date of this Agreement.

SPs Effective 1/1/09

THE REST OF THIS PAGE INTENTIONALLY LEFT BLANK

27. SIGNATURE PAGE

Agreement Routing Number 14 HA2 63300

THE PARTIES HERETO HAVE EXECUTED THIS AGREEMENT

*** Persons signing for The Local Agency hereby swear and affirm that they are authorized to act on The Local Agency's behalf and acknowledge that the State is relying on their representations to that effect.**

THE LOCAL AGENCY
The City of Colorado Springs, Colorado

By: _____
Name of Authorized Individual

Title: _____
Official Title of Authorized Individual

*Signature

Date: _____

STATE OF COLORADO
John W. Hickenlooper, GOVERNOR
Colorado Department of Transportation
Donald E. Hunt, Executive Director

By: **Timothy J. Harris, P.E., Chief Engineer**

Date: _____

APPROVED AS TO FORM



MUNICIPAL ATTORNEY
CITY OF COLORADO SPRINGS

ALL AGREEMENTS REQUIRE APPROVAL BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Agreements. This Agreement is not valid until signed and dated below by the State Controller or delegate. The Local Agency is not authorized to begin performance until such time. If The Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay The Local Agency for such performance or for any goods and/or services provided hereunder.

STATE CONTROLLER
Robert Jaros, CPA, MBA, JD

By: _____
Colorado Department of Transportation

Date: _____

28. EXHIBIT A – SCOPE OF WORK

Las Vegas PEL

STIP Number: SPP6726.015

Sub-Account/Project Code: 19794/STU M240-152

General Description

The goal of this PEL study is to conduct a detailed analysis and obtain public input to determine long term roadway needs, including identifying all the elements to achieve a Complete Streets cross section per the City of Colorado Springs' 2005 Complete Streets policy.

Conclusions of the study should include:

- Number of roadway lanes and cross section
- Appropriate access for planned land use
- Availability of private/public partnerships
- Coordinating El Paso County and the City of Colorado Springs desires
- Identifying NEPA level issues
- Identifying funding mechanisms to improve the corridor

The goal of the City of Colorado Springs is to enhance the corridor as an entry into the southern portion of the downtown area. Along with planned roadway improvements and environmental issues the study should identify areas where redevelopment may occur to enhance economic development opportunities while understanding and addressing nuances such as the water treatment facility, other obstructive uses along the corridor and flood plain issues.

29. EXHIBIT B – LOCAL AGENCY RESOLUTION

**LOCAL AGENCY
ORDINANCE
or
RESOLUTION**

30. EXHIBIT C – FUNDING PROVISIONS

A. Cost of Work Estimate

The Local Agency has estimated the total cost the Work, which is to be funded as follows:

1 BUDGETED FUNDS			
a. Federal Funds			\$384,000.00
	(82.79% of Participating Costs)		
b. Local Agency Matching Funds			\$79,824.00
	(17.21% of Participating Costs)		
TOTAL BUDGETED FUNDS			\$463,824.00
2 ESTIMATED CDOT-INCURRED COSTS			
a. Federal Share			\$0.00
	(0% of Participating Costs)		
b. Local Agency			
Local Agency Share of Participating Costs	\$0.00		
Non-Participating Costs (Including Non-Participating Indirects)	\$0.00		
Estimated to be Billed to Local Agency			\$0.00
TOTAL ESTIMATED CDOT-INCURRED COSTS			\$0.00
3 ESTIMATED PAYMENT TO LOCAL AGENCY			
a. Federal Funds Budgeted (1a)			\$384,000.00
b. Less Estimated Federal Share of CDOT-Incurred Costs (2a)			\$0.00
TOTAL ESTIMATED PAYMENT TO LOCAL AGENCY			\$384,000.00
FOR CDOT ENCUMBRANCE PURPOSES			
Total Encumbrance Amount			\$463,824.00
Less ROW Acquisition 3111 and/or ROW Relocation 3109			\$0.00
Net to be encumbered as follows:			\$463,824.00
WBS Element 19794.10.30	Design	3015	\$463,824.00

B. Matching Funds

The matching ratio for the federal participating funds for this Work is 82.79% federal-aid funds (CFDA #20.205) to 17.21% Local Agency funds, it being understood that such ratio applies only to the \$463,824.00 that is eligible for federal participation, it being further understood that all non-participating costs are borne by the Local Agency at 100%. If the total participating cost of performance of the Work exceeds \$463,824.00, and additional federal funds are made available for the Work, the Local Agency shall pay 17.21% of all such costs eligible for federal participation and 100% of all non-participating costs; if additional federal funds are not made available, the Local Agency shall pay all such excess costs. If the total participating cost of performance of the Work is less than \$463,824.00, then the amounts of Local Agency and federal-aid funds will be decreased in accordance with the funding ratio described herein. The performance of the Work shall be at no cost to the State.

C. Maximum Amount Payable

The maximum amount payable to the Local Agency under this Agreement shall be \$384,000.00 (For CDOT accounting purposes, the federal funds of \$384,000.00 and the Local Agency matching funds of \$79,824.00 will be encumbered for a total encumbrance of \$463,824.00), unless such amount is increased by an appropriate written modification to this Agreement executed before any increased cost is incurred. It is understood and agreed by the parties hereto that the total cost of the Work stated hereinbefore is the best estimate available, based on the design data as approved at the time of execution of this Agreement, and that such cost is subject to revisions (in accord with the procedure in the previous sentence) agreeable to the parties prior to bid and award.

D. Single Audit Act Amendment

All state and local government and non-profit organizations receiving more than \$500,000 from all funding sources defined as federal financial assistance for Single Audit Act Amendment purposes shall comply with the audit requirements of OMB Circular A-133 (Audits of States, Local Governments and Non-Profit Organizations) see also, 49 C.F.R. 18.20 through 18.26. The Single Audit Act Amendment requirements applicable to the Local Agency receiving federal funds are as follows:

i. Expenditure less than \$500,000

If the Local Agency expends less than \$500,000 in Federal funds (all federal sources, not just Highway funds) in its fiscal year then this requirement does not apply.

ii. Expenditure exceeding than \$500,000-Highway Funds Only

If the Local Agency expends more than \$500,000 in Federal funds, but only received federal Highway funds (Catalog of Federal Domestic Assistance, CFDA 20.205) then a program specific audit shall be performed. This audit will examine the "financial" procedures and processes for this program area.

iii. Expenditure exceeding than \$500,000-Multiple Funding Sources

If the Local Agency expends more than \$500,000 in Federal funds, and the Federal funds are from multiple sources (FTA, HUD, NPS, etc.) then the Single Audit Act applies, which is an audit on the entire organization/entity.

iv. Independent CPA

Single Audit shall only be conducted by an independent CPA, not by an auditor on staff. An audit is an allowable direct or indirect cost.

31. EXHIBIT D – OPTION LETTER

SAMPLE IGA OPTION LETTER

(This option has been created by the Office of the State Controller for CDOT use only)

NOTE: This option is limited to the specific contract scenarios listed below
AND may be used in place of exercising a formal amendment.

Date:	State Fiscal Year:	Option Letter No.	Option Letter CMS Routing #
			Option Letter SAP #
Original Contract CMS #		Original Contract SAP #	

Vendor name: _____

SUBJECT:

- A. Option to unilaterally authorize the Local Agency to begin a phase which may include Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous ONLY (*does not apply to Acquisition/Relocation or Railroads*) and to update encumbrance amounts(*a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.*).
- B. Option to unilaterally transfer funds from one phase to another phase (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).
- C. Option to unilaterally do both A and B (a new Exhibit C must be attached with the option letter and shall be labeled C-1, future changes for this option shall be labeled as follows: C-2, C-3, C-4, etc.).

REQUIRED PROVISIONS. All option letters shall contain the appropriate provisions as follows:

Option A (*Insert the following language for use with the Option A*):

In accordance with the terms of the original Agreement (*insert CMS routing # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to authorize the Local Agency to begin a phase that will include (*describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*) and to encumber previously budgeted funds for the phase based upon changes in funding availability and authorization. The encumbrance for (*Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous*)is (*insert dollars here*). A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only, please delete when using this option. Future changes for this option for Exhibit C shall be labled as follows: C-2, C-3, C-4, etc.*).

Option B (*Insert the following language for use with Option B*):

In accordance with the terms of the original Agreement (*insert CMS # of the original Agreement*) between the State of Colorado, Department of Transportation and (*insert the Local Agency's name here*), the State hereby exercises the option to transfer funds from (*describe phase from which funds will be moved*) to (*describe phase to which funds will be moved*) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (*The following is a NOTE only so please delete when using this option: future changes for this option for Exhibit C shall be labeled as follows: C-2, C-3, C-4, etc.; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be*

made using an formal amendment)..

Option C (Insert the following language for use with Option C):

In accordance with the terms of the original Agreement (insert CMS routing # of original Agreement) between the State of Colorado, Department of Transportation and (insert the Local Agency's name here), the State hereby exercises the option to 1) release the Local Agency to begin a phase that will include (describe which phase will be added and include all that apply – Design, Construction, Environmental, Utilities, ROW incidentals or Miscellaneous); 2) to encumber funds for the phase based upon changes in funding availability and authorization; and 3) to transfer funds from (describe phase from which funds will be moved) to (describe phase to which funds will be moved) based on variance in actual phase costs and original phase estimates. A new **Exhibit C-1** is made part of the original Agreement and replaces **Exhibit C**. (The following is a NOTE only so please delete when using this option: future changes for this option for **Exhibit C** shall be labeled as follows: **C-2, C-3, C-4, etc.**; and no more than 24.99% of any phase may be moved using this option letter. A transfer greater than 24.99% must be made using an formal amendment).

(The following language must be included on ALL options):

The total encumbrance as a result of this option and all previous options and/or amendments is now (insert total encumbrance amount), as referenced in **Exhibit (C-1, C-2, etc., as appropriate)**. The total budgeted funds to satisfy services/goods ordered under the Agreement remains the same: (indicate total budgeted funds) as referenced in **Exhibit (C-1, C-2, etc., as appropriate)** of the original Agreement.

The effective date of this option letter is upon approval of the State Controller or delegate.

APPROVALS:

State of Colorado:

John W. Hickenlooper, Governor

By: _____ Date: _____
Executive Director, Colorado Department of Transportation

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS §24-30-202 requires the State Controller to approve all State Contracts. This Agreement is not valid until signed and dated below by the State Controller or delegate. Contractor is not authorized to begin performance until such time. If the Local Agency begins performing prior thereto, the State of Colorado is not obligated to pay the Local Agency for such performance or for any goods and/or services provided hereunder.

**State Controller
Robert Jaros, CPA, MBA, JD**

By: _____

Date: _____

32. EXHIBIT E – LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST

COLORADO DEPARTMENT OF TRANSPORTATION LOCAL AGENCY CONTRACT ADMINISTRATION CHECKLIST			
Project No. STU M240-152	STIP No. SPP6726.015	Project Code SPP6726.015	Region 2
Project Location The Las Vegas PEL study corridor extends from Tejon Street south to SH85			Date
Project Description The goal of the Las Vegas PEL study is to conduct a detailed analysis and obtain public input to determine long term roadway needs (# lanes, appropriate cross section, available partnerships, NEPA level issues and funding mechanisms)			
Local Agency Colorado Springs	Local Agency Project Manager Aaron Egbert		
CDOT Resident Engineer Dave Watt	CDOT Project Manager Lesley Mace		
<p>INSTRUCTIONS: This checklist shall be utilized to establish the contract administration responsibilities of the individual parties to this agreement. The checklist becomes an attachment to the Local Agency agreement. Section numbers correspond to the applicable chapters of the <i>CDOT Local Agency Manual</i>.</p> <p>The checklist shall be prepared by placing an "X" under the responsible party, opposite each of the tasks. The "X" denotes the party responsible for initiating and executing the task. Only one responsible party should be selected. When neither CDOT nor the Local Agency is responsible for a task, not applicable (NA) shall be noted. In addition, a "#" will denote that CDOT must concur or approve.</p> <p>Tasks that will be performed by Headquarters staff will be indicated. The Regions, in accordance with established policies and procedures, will determine who will perform all other tasks that are the responsibility of CDOT.</p> <p>The checklist shall be prepared by the CDOT Resident Engineer or the CDOT Project Manager, in cooperation with the Local Agency Project Manager, and submitted to the Region Program Engineer. If contract administration responsibilities change, the CDOT Resident Engineer, in cooperation with the Local Agency Project Manager, will prepare and distribute a revised checklist.</p>			

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
TIP / STIP AND LONG-RANGE PLANS			
2.1	Review Project to ensure it is consistent with STIP and amendments thereto		X
FEDERAL FUNDING OBLIGATION AND AUTHORIZATION			
4.1	Authorize funding by phases (CDOT Form 418 - Federal-aid Program Data. Requires FHWA concurrence/involvement)		X
PROJECT DEVELOPMENT			
5.1	Prepare Design Data - CDOT Form 463	X	
5.2	Prepare Local Agency/CDOT Inter-Governmental Agreement (see also Chapter 3)		X
5.3	Conduct Consultant Selection/Execute Consultant Agreement	X	
5.4	Conduct Design Scoping Review Meeting	X	
5.5	Conduct Public Involvement	X	
5.6	Conduct Field Inspection Review (FIR)	X	
5.7	Conduct Environmental Processes (may require FHWA concurrence/involvement)	X	
5.8	Acquire Right-of-Way (may require FHWA concurrence/involvement)		
5.9	Obtain Utility and Railroad Agreements		
5.10	Conduct Final Office Review (FOR)	N/A	
5.11	Justify Force Account Work by the Local Agency		
5.12	Justify Proprietary, Sole Source, or Local Agency Furnished Items		
5.13	Document Design Exceptions - CDOT Form 464		
5.14	Prepare Plans, Specifications and Construction Cost Estimates		
5.15	Ensure Authorization of Funds for Construction		X

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
PROJECT DEVELOPMENT CIVIL RIGHTS AND LABOR COMPLIANCE			
6.1	Set Underutilized Disadvantaged Business Enterprise (UBDE) Goals for Consultant and Construction Contracts (CDOT Region EEO/Civil Rights Specialist)		X
6.2	Determine Applicability of Davis-Bacon Act This project <input checked="" type="checkbox"/> is <input type="checkbox"/> is not exempt from Davis-Bacon requirements as determined by the functional classification of the project location (Projects located on local roads and rural minor collectors may be exempt.) David Watt _____ 10-7-2013 _____ CDOT Resident Engineer (Signature on File) Date		X
6.3	Set On-the-Job Training Goals. Goal is zero if total construction is less than \$1 million (CDOT Region EEO/Civil Rights Specialist)		X
6.4	Title VI Assurances Ensure the correct Federal Wage Decision, all required Disadvantaged Business Enterprise/On-the-Job Training special provisions and FHWA Form 1273 are included in the Contract (CDOT Resident Engineer)		X
ADVERTISE, BID AND AWARD			
7.1	Obtain Approval for Advertisement Period of Less Than Three Weeks	X	
7.2	Advertise for Bids	X	
7.3	Distribute "Advertisement Set" of Plans and Specifications	X	
7.4	Review Worksite and Plan Details with Prospective Bidders While Project Is Under Advertisement	X	
7.5	Open Bids	X	
7.6	Process Bids for Compliance		
	Check CDOT Form 715 - Certificate of Proposed Underutilized DBE Participation when the low bidder meets UDBE goals		X
	Evaluate CDOT Form 718 - Underutilized DBE Good Faith Effort Documentation and determine if the Contractor has made a good faith effort when the low bidder does not meet DBE goals		X
	Submit required documentation for CDOT award concurrence	X	
7.7	Concurrence from CDOT to Award		X
7.8	Approve Rejection of Low Bidder		X
7.9	Award Contract	X	
7.10	Provide "Award" and "Record" Sets of Plans and Specifications	X	
CONSTRUCTION MANAGEMENT This is not a construction Project			
8.1	Issue Notice to Proceed to the Contractor	N/A	
8.2	Project Safety		X
8.3	Conduct Conferences:		
	Pre-Construction Conference (Appendix B)	N/A	
	Pre-survey		
	• Construction staking	N/A	
	• Monumentation	N/A	
	Partnering (Optional)	N/A	
	Structural Concrete Pre-Pour (Agenda is in CDOT Construction Manual)	N/A	
	Concrete Pavement Pre-Paving (Agenda is in CDOT Construction Manual)	N/A	
	HMA Pre-Paving (Agenda is in CDOT Construction Manual)	N/A	
8.4	Develop and distribute Public Notice of Planned Construction to media and local residents	N/A	
8.5	Supervise Construction		
	A Professional Engineer (PE) registered in Colorado, who will be "in responsible charge of construction supervision." Aaron Egbert _____ 719-385-5465 _____ Local Agency Professional Engineer or Phone number CDOT Resident Engineer	N/A	

NO.	DESCRIPTION OF TASK	RESPONSIBLE PARTY	
		LA	CDOT
	Provide competent, experienced staff who will ensure the Contract work is constructed in accordance with the plans and specifications	N/A	
	Construction inspection and documentation	N/A	
8.6	Approve Shop Drawings	N/A	
8.7	Perform Traffic Control Inspections	N/A	
8.8	Perform Construction Surveying	N/A	
8.9	Monument Right-of-Way	N/A	
8.10	Prepare and Approve Interim and Final Contractor Pay Estimates		
	Provide the name and phone number of the person authorized for this task.	N/A	
	Aaron Egbert 719-385-5465		
	Local Agency Representative Phone number		
8.11	Prepare and Approve Interim and Final Utility and Railroad Billings	N/A	
8.12	Prepare Local Agency Reimbursement Requests	X	
8.13	Prepare and Authorize Change Orders	N/A	
8.14	Approve All Change Orders		X
8.15	Monitor Project Financial Status	N/A	
8.16	Prepare and Submit Monthly Progress Reports	N/A	
8.17	Resolve Contractor Claims and Disputes	N/A	
8.18	Conduct Routine and Random Project Reviews		
	Provide the name and phone number of the person responsible for this task.		X
	David Watt 719-227-3202		
	CDOT Resident Engineer Phone number		
MATERIALS			
9.1	Conduct Materials Pre-Construction Meeting	N/A	
9.2	Complete CDOT Form 250 - Materials Documentation Record <ul style="list-style-type: none"> Generate form, which includes determining the minimum number of required tests and applicable material submittals for all materials placed on the project Update the form as work progresses Complete and distribute form after work is completed 	N/A	
9.3	Perform Project Acceptance Samples and Tests	N/A	
9.4	Perform Laboratory Verification Tests	N/A	
9.5	Accept Manufactured Products <ul style="list-style-type: none"> Inspection of structural components: <ul style="list-style-type: none"> Fabrication of structural steel and pre-stressed concrete structural components Bridge modular expansion devices (0" to 6" or greater) Fabrication of bearing devices 	N/A	
9.6	Approve Sources of Materials	N/A	
9.7	Independent Assurance Testing (IAT), Local Agency Procedures <input type="checkbox"/> CDOT Procedures <input type="checkbox"/> <ul style="list-style-type: none"> Generate IAT schedule Schedule and provide notification Conduct IAT 	N/A	
9.8	Approve mix designs <ul style="list-style-type: none"> Concrete Hot mix asphalt 	N/A	
9.9	Check Final Materials Documentation	N/A	
9.10	Complete and Distribute Final Materials Documentation	N/A	

CONSTRUCTION CIVIL RIGHTS AND LABOR COMPLIANCE			
10.1	Fulfill Project Bulletin Board and Pre-Construction Packet Requirements	N/A	
10.2	Process CDOT Form 205 - Sublet Permit Application Review and sign completed CDOT Form 205 for each subcontractor, and submit to EEO/Civil Rights Specialist	N/A	
10.3	Conduct Equal Employment Opportunity and Labor Compliance Verification Employee Interviews. Complete CDOT Form 280	N/A	
10.4	Monitor Disadvantaged Business Enterprise Participation to Ensure Compliance with the "Commercially Useful Function" Requirements	N/A	
10.5	Conduct Interviews When Project Utilizes On-the-Job Trainees. Complete CDOT Form 200 - OJT Training Questionnaire	N/A	
10.6	Check Certified Payrolls (Contact the Region EEO/Civil Rights Specialists for training requirements.)	N/A	
10.7	Submit FHWA Form 1391 - Highway Construction Contractor's Annual EEO Report	N/A	
FINALS			
11.1	Conduct Final Project Inspection. Complete and submit CDOT Form 1212 - Final Acceptance Report (Resident Engineer with mandatory Local Agency participation.)		X
11.2	Write Final Project Acceptance Letter	X	
11.3	Advertise for Final Settlement	X	
11.4	Prepare and Distribute Final As-Constructed Plans	N/A	
11.5	Prepare EEO Certification		
11.6	Check Final Quantities, Plans, and Pay Estimate; Check Project Documentation; and submit Final Certifications	X	
11.7	Check Material Documentation and Accept Final Material Certification (See Chapter 9)	N/A	
11.8	Obtain CDOT Form 17 from the Contractor and Submit to the Resident Engineer	N/A	
11.9	Obtain FHWA Form 47 - Statement of Materials and Labor Used ... from the Contractor	N/A	
11.10	Complete and Submit CDOT Form 1212 - Final Acceptance Report (by CDOT)		X
11.11	Process Final Payment		X
11.12	Complete and Submit CDOT Form 950 - Project Closure		X
11.13	Retain Project Records for Six Years from Date of Project Closure	X	
11.14	Retain Final Version of Local Agency Contract Administration Checklist		X

cc: CDOT Resident Engineer/Project Manager
 CDOT Region Program Engineer
 CDOT Region EEO/Civil Rights Specialist
 CDOT Region Materials Engineer
 CDOT Contracts and Market Analysis Branch
 Local Agency Project Manager

33. EXHIBIT F – CERTIFICATION FOR FEDERAL-AID CONTRACTS

The Local Agency certifies, by signing this Agreement, to the best of its knowledge and belief, that:

No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, Agreement, loan, or cooperative agreement.

If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or of Congress, or an employee of a Member of Congress in connection with this Federal contract, Agreement, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

The prospective participant also agree by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such sub-recipients shall certify and disclose accordingly.

Required by 23 CFR 635.112

34. EXHIBIT G – DISADVANTAGED BUSINESS ENTERPRISE

SECTION 1. Policy.

It is the policy of the Colorado Department of Transportation (CDOT) that disadvantaged business enterprises shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement, pursuant to 49 CFR Part 26. Consequently, the 49 CFR Part IE DBE requirements the Colorado Department of Transportation DBE Program (or a Local Agency DBE Program approved in advance by the State) apply to this agreement.

SECTION 2. DBE Obligation.

The recipient or its the Local Agency agrees to ensure that disadvantaged business enterprises as determined by the Office of Certification at the Colorado Department of Regulatory Agencies have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all participants or contractors shall take all necessary and reasonable steps in accordance with the CDOT DBE program (or a Local Agency DBE Program approved in advance by the State) to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of CDOT assisted contracts.

SECTION 3 DBE Program.

The Local Agency (sub-recipient) shall be responsible for obtaining the Disadvantaged Business Enterprise Program of the Colorado Department of Transportation, 1988, as amended, and shall comply with the applicable provisions of the program. (If applicable).

A copy of the DBE Program is available from and will be mailed to the Local Agency upon request:

Business Programs Office

Colorado Department of Transportation

4201 East Arkansas Avenue, Room 287

Denver, Colorado 80222-3400

Phone: (303) 757-9234

revised 1/22/98

Required by 49 CFR Part 26

35. EXHIBIT H – LOCAL AGENCY PROCEDURES FOR CONSULTANT SERVICES

THE LOCAL AGENCY SHALL USE THESE PROCEDURES TO IMPLEMENT FEDERAL-AID PROJECT AGREEMENTS WITH PROFESSIONAL CONSULTANT SERVICES

Title 23 Code of Federal Regulations (CFR) 172 applies to a federally funded local agency project agreement administered by CDOT that involves professional consultant services. 23 CFR 172.1 states "The policies and procedures involve federally funded contracts for engineering and design related services for projects subject to the provisions of 23 U.S.C. 112(a) and are issued to ensure that a qualified consultant is obtained through an equitable selection process, that prescribed work is properly accomplished in a timely manner, and at fair and reasonable cost" and according to 23 CFR 172.5 "Price shall not be used as a factor in the analysis and selection phase." Therefore, local agencies must comply with these CFR requirements when obtaining professional consultant services under a federally funded consultant contract administered by CDOT.

CDOT has formulated its procedures in Procedural Directive (P.D.) 400.1 and the related operations guidebook titled "Obtaining Professional Consultant Services". This directive and guidebook incorporate requirements from both Federal and State regulations, i.e., 23 CFR 172 and CRS §24-30-1401 et seq. Copies of the directive and the guidebook may be obtained upon request from CDOT's Agreements and Consultant Management Unit. [Local agencies should have their own written procedures on file for each method of procurement that addresses the items in 23 CFR 172].

Because the procedures and laws described in the Procedural Directive and the guidebook are quite lengthy, the subsequent steps serve as a short-hand guide to CDOT procedures that a local agency must follow in obtaining professional consultant services. This guidance follows the format of 23 CFR 172. The steps are:

1. The contracting local agency shall document the need for obtaining professional services.
2. Prior to solicitation for consultant services, the contracting local agency shall develop a detailed scope of work and a list of evaluation factors and their relative importance. The evaluation factors are those identified in C.R.S. 24-30-1403. Also, a detailed cost estimate should be prepared for use during negotiations.
3. The contracting agency must advertise for contracts in conformity with the requirements of C.R.S. 24-30-1405. The public notice period, when such notice is required, is a minimum of 15 days prior to the selection of the three most qualified firms and the advertising should be done in one or more daily newspapers of general circulation.
4. The request for consultant services should include the scope of work, the evaluation factors and their relative importance, the method of payment, and the goal of 10% for Disadvantaged Business Enterprise (DBE) participation as a minimum for the project.
5. The analysis and selection of the consultants shall be done in accordance with CRS §24-30-1403. This section of the regulation identifies the criteria to be used in the evaluation of CDOT pre-qualified prime consultants and their team. It also shows which criteria are used to short-list and to make a final selection.

The short-list is based on the following evaluation factors:

- a. Qualifications,
- b. Approach to the Work,
- c. Ability to furnish professional services.
- d. Anticipated design concepts, and
- e. Alternative methods of approach for furnishing the professional services.

Evaluation factors for final selection are the consultant's:

- a. Abilities of their personnel,
 - b. Past performance,
 - c. Willingness to meet the time and budget requirement,
 - d. Location,
 - e. Current and projected work load,
 - f. Volume of previously awarded contracts, and
 - g. Involvement of minority consultants.
6. Once a consultant is selected, the local agency enters into negotiations with the consultant to obtain a fair and reasonable price for the anticipated work. Pre-negotiation audits are prepared for contracts expected to be greater than \$50,000. Federal reimbursements for costs are limited to those costs allowable under the cost principles of 48 CFR 31. Fixed fees (profit) are determined with consideration given to size, complexity, duration, and degree of risk involved in the work. Profit is in the range of six to 15 percent of the total direct and indirect costs.
 7. A qualified local agency employee shall be responsible and in charge of the Work to ensure that the work being pursued is complete, accurate, and consistent with the terms, conditions, and specifications of the contract. At the end of Work, the local agency prepares a performance evaluation (a CDOT form is available) on the consultant.
 8. Each of the steps listed above is to be documented in accordance with the provisions of 49 CFR 18.42, which provide for records to be kept at least three years from the date that the local agency submits its final expenditure report. Records of projects under litigation shall be kept at least three years after the case has been settled.

CRS §§24-30-1401 through 24-30-1408, 23 CFR Part 172, and P.D. 400.1, provide additional details for complying with the preceeding eight (8) steps.

36. EXHIBIT I – FEDERAL-AID CONTRACT PROVISIONS

FHWA-1273 -- Revised May 1, 2012

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Nonsegregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Compliance with Governmentwide Suspension and Debarment Requirements
- XI. Certification Regarding Use of Contract Funds for Lobbying

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under Title 23 (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services)

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services). The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in bid proposal or request for proposal documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors.

II. NONDISCRIMINATION

The provisions of this section related to 23 CFR Part 230 are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR 60, 29 CFR 1625-1627, Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR 60, and 29 CFR 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with Title 23 USC Section 140, the Rehabilitation Act of 1973, as amended (29 USC 794), and Title VI of the Civil Rights Act of 1964, as amended, and related regulations including 49 CFR Parts 21, 26 and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR 230, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, 29 CFR 1625-1627, 41 CFR 60 and 49 CFR 27) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under

this contract. The provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the contracting agency and the Federal Government to ensure that it has made every good faith effort to provide equal opportunity with respect to all of its terms and conditions of employment and in their review of activities under the contract.

b. The contractor will accept as its operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, pre-apprenticeship, and/or on-the-job training."

2. EEO Officer: The contractor will designate and make known to the contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active EEO program and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minorities and women.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. Recruitment: When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minorities and women in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minorities and women. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority and women applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, the contractor is expected to observe the provisions of that agreement to the extent that the system meets the contractor's compliance with EEO contract provisions. Where implementation of such an agreement has the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Federal nondiscrimination provisions.

c. The contractor will encourage its present employees to refer minorities and women as applicants for employment. Information and procedures with regard to referring such applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with its obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of their avenues of appeal.

6. Training and Promotion:

a. The contractor will assist in locating, qualifying, and increasing the skills of minorities and women who are

applicants for employment or current employees. Such efforts should be aimed at developing full journey level status employees in the type of trade or job classification involved.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision. The contracting agency may reserve training positions for persons who receive welfare assistance in accordance with 23 U.S.C. 140(a)

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of employees who are minorities and women and will encourage eligible employees to apply for such training and promotion.

7. Unions: If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use good faith efforts to obtain the cooperation of such unions to increase opportunities for minorities and women. Actions by the contractor, either directly or through a contractor's association acting as agent, will include the procedures set forth below:

a. The contractor will use good faith efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minorities and women for membership in the unions and increasing the skills of minorities and women so that they may qualify for higher paying employment.

b. The contractor will use good faith efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the contracting agency and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minorities and women. The failure of a union to provide sufficient referrals (even though it is obligated to provide exclusive referrals under the terms of a collective bargaining agreement) does not relieve the contractor from the requirements of this paragraph. In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the contracting agency.

8. Reasonable Accommodation for Applicants / Employees with Disabilities: The contractor must be familiar

with the requirements for and comply with the Americans with Disabilities Act and all rules and regulations established there under. Employers must provide reasonable accommodation in all employment activities unless to do so would cause an undue hardship.

9. Selection of Subcontractors, Procurement of Materials and Leasing of Equipment: The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor shall take all necessary and reasonable steps to ensure nondiscrimination in the administration of this contract.

a. The contractor shall notify all potential subcontractors and suppliers and lessors of their EEO obligations under this contract.

b. The contractor will use good faith efforts to ensure subcontractor compliance with their EEO obligations.

10. Assurance Required by 49 CFR 26.13(b):

a. The requirements of 49 CFR Part 26 and the State DOT's U.S. DOT-approved DBE program are incorporated by reference.

b. The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the contracting agency deems appropriate.

11. Records and Reports: The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following the date of the final payment to the contractor for all contract work and shall be available at reasonable times and places for inspection by authorized representatives of the contracting agency and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number and work hours of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women; and

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minorities and women;

b. The contractors and subcontractors will submit an annual report to the contracting agency each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. The staffing data should represent the project work force on board in all or any part of the last payroll period preceding the end of July. If on-the-job training is being required by special provision, the contractor

will be required to collect and report training data. The employment data should reflect the work force on board during all or any part of the last payroll period preceding the end of July.

III. NONSEGREGATED FACILITIES

This provision is applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more.

The contractor must ensure that facilities provided for employees are provided in such a manner that segregation on the basis of race, color, religion, sex, or national origin cannot result. The contractor may neither require such segregated use by written or oral policies nor tolerate such use by employee custom. The contractor's obligation extends further to ensure that its employees are not assigned to perform their services at any location, under the contractor's control, where the facilities are segregated. The term "facilities" includes waiting rooms, work areas, restaurants and other eating areas, time clocks, restrooms, washrooms, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing provided for employees. The contractor shall provide separate or single-user restrooms and necessary dressing or sleeping areas to assure privacy between sexes.

IV. DAVIS-BACON AND RELATED ACT PROVISIONS

This section is applicable to all Federal-aid construction projects exceeding \$2,000 and to all related subcontracts and lower-tier subcontracts (regardless of subcontract size). The requirements apply to all projects located within the right-of-way of a roadway that is functionally classified as Federal-aid highway. This excludes roadways functionally classified as local roads or rural minor collectors, which are exempt. Contracting agencies may elect to apply these requirements to other projects.

The following provisions are from the U.S. Department of Labor regulations in 29 CFR 5.5 "Contract provisions and related matters" with minor revisions to conform to the FHWA-1273 format and FHWA program requirements.

1. Minimum wages

a. All laborers and mechanics employed or working upon the site of the work, will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions

of paragraph 1.d. of this section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein. Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classification and wage rates conformed under paragraph 1.b. of this section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

b.(1) The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(i) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(ii) The classification is utilized in the area by the construction industry; and

(iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(2) If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(3) In the event the contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. The Wage and Hour Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or

will notify the contracting officer within the 30-day period that additional time is necessary.

(4) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs 1.b.(2) or 1.b.(3) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

c. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

d. If the contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program. Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

2. Withholding

The contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the contractor under this contract, or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the contracting agency may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

3. Payrolls and basic records

a. Payrolls and basic records relating thereto shall be maintained by the contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the work. Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-

Bacon Act, the contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

b. (1) The contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the contracting agency. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under 29 CFR 5.5(a)(3)(i), except that full social security numbers and home addresses shall not be included on weekly transmittals. Instead the payrolls shall only need to include an individually identifying number for each employee (e.g., the last four digits of the employee's social security number). The required weekly payroll information may be submitted in any form desired. Optional Form WH-347 is available for this purpose from the Wage and Hour Division Web site at <http://www.dol.gov/esa/whd/forms/wh347instr.htm> or its successor site. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors. Contractors and subcontractors shall maintain the full social security number and current address of each covered worker, and shall provide them upon request to the contracting agency for transmission to the State DOT, the FHWA or the Wage and Hour Division of the Department of Labor for purposes of an investigation or audit of compliance with prevailing wage requirements. It is not a violation of this section for a prime contractor to require a subcontractor to provide addresses and social security numbers to the prime contractor for its own records, without weekly submission to the contracting agency..

(2) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(i) That the payroll for the payroll period contains the information required to be provided under § 5.5 (a)(3)(ii) of Regulations, 29 CFR part 5, the appropriate information is being maintained under § 5.5 (a)(3)(i) of Regulations, 29 CFR part 5, and that such information is correct and complete;

(ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(3) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 3.b.(2) of this section.

(4) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

c. The contractor or subcontractor shall make the records required under paragraph 3.a of this section available for inspection, copying, or transcription by authorized representatives of the contracting agency, the State DOT, the FHWA, or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the FHWA may, after written notice to the contractor, the contracting agency or the State DOT, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

4. Apprentices and trainees

a. Apprentices (programs of the USDOL)

Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Office of Apprenticeship Training, Employer and Labor Services, or with a State Apprenticeship Agency recognized by the Office, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Office of Apprenticeship Training, Employer and Labor Services or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice.

The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman hourly

rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

In the event the Office of Apprenticeship Training, Employer and Labor Services, or a State Apprenticeship Agency recognized by the Office, withdraws approval of an apprenticeship program, the contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

b. Trainees (programs of the USDOL)

Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration.

The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration.

Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Equal employment opportunity. The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

d. Apprentices and Trainees (programs of the U.S. DOT).

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

5. Compliance with Copeland Act requirements. The contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this contract.

6. Subcontracts. The contractor or subcontractor shall insert Form FHWA-1273 in any subcontracts and also require the subcontractors to include Form FHWA-1273 in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

7. Contract termination; debarment. A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

8. Compliance with Davis-Bacon and Related Act requirements. All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

9. Disputes concerning labor standards. Disputes arising out of the labor standards provisions of this contract shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

10. Certification of eligibility.

a. By entering into this contract, the contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

b. No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

c. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

V. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

The following clauses apply to any Federal-aid construction contract in an amount in excess of \$100,000 and subject to the overtime provisions of the Contract Work Hours and Safety Standards Act. These clauses shall be inserted in addition to the clauses required by 29 CFR 5.5(a) or 29 CFR 4.6. As used in this paragraph, the terms laborers and mechanics include watchmen and guards.

1. Overtime requirements. No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1.) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1.) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1.) of this section.

3. Withholding for unpaid wages and liquidated damages. The FHWA or the contracting agency shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2.) of this section.

4. Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1.) through (4.) of this section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs (1.) through (4.) of this section.

VI. SUBLETTING OR ASSIGNING THE CONTRACT

This provision is applicable to all Federal-aid construction contracts on the National Highway System.

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the contracting agency. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635.116).

a. The term "perform work with its own organization" refers to workers employed or leased by the prime contractor, and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor or lower tier subcontractor, agents of the prime contractor, or any other assignees. The term may include payments for the costs of hiring leased employees from an employee leasing firm meeting all relevant Federal and State regulatory requirements. Leased employees may only be included in this term if the prime contractor meets all of the following conditions:

- (1) the prime contractor maintains control over the supervision of the day-to-day activities of the leased employees;
- (2) the prime contractor remains responsible for the quality of the work of the leased employees;
- (3) the prime contractor retains all power to accept or exclude individual employees from work on the project; and
- (4) the prime contractor remains ultimately responsible for the payment of predetermined minimum wages, the submission of payrolls, statements of compliance and all other Federal regulatory requirements.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid or propose on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph (1) of Section VI is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the contracting agency has assured that each subcontract is

evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

5. The 30% self-performance requirement of paragraph (1) is not applicable to design-build contracts; however, contracting agencies may establish their own self-performance requirements.

VII. SAFETY; ACCIDENT PREVENTION

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 3704).

VIII. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, Form FHWA-1022 shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined under this title or imprisoned not more than 5 years or both."

IX. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts.

By submission of this bid/proposal or the execution of this contract, or subcontract, as appropriate, the bidder, proposer, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any person who is or will be utilized in the performance of this contract is not prohibited from receiving an award due to a violation of Section 508 of the Clean Water Act or Section 306 of the Clean Air Act.
2. That the contractor agrees to include or cause to be included the requirements of paragraph (1) of this Section X in every subcontract, and further agrees to take such action as the contracting agency may direct as a means of enforcing such requirements.

X. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

This provision is applicable to all Federal-aid construction contracts, design-build contracts, subcontracts, lower-tier subcontracts, purchase orders, lease agreements, consultant contracts or any other covered transaction requiring FHWA approval or that is estimated to cost \$25,000 or more – as defined in 2 CFR Parts 180 and 1200.

1. Instructions for Certification – First Tier Participants:

- a. By signing and submitting this proposal, the prospective first tier participant is providing the certification set out below.
- b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this

covered transaction. The prospective first tier participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective first tier participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the contracting agency determined to enter into this transaction. If it is later determined that the prospective participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the contracting agency may terminate this transaction for cause of default.

d. The prospective first tier participant shall provide immediate written notice to the contracting agency to whom this proposal is submitted if any time the prospective first tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contractor). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers)

f. The prospective first tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective first tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions," provided by the department or contracting agency, entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

1. Nothing contained in the foregoing shall be construed to require the establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of the prospective participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph (f) of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

2. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – First Tier Participants:

a. The prospective first tier participant certifies to the best of its knowledge and belief, that it and its principals:

(1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency;

(2) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (a)(2) of this certification; and

(4) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

b. Where the prospective participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

2. Instructions for Certification - Lower Tier Participants:

(Applicable to all subcontracts, purchase orders and other lower tier transactions requiring prior FHWA approval or estimated to cost \$25,000 or more - 2 CFR Parts 180 and 1200)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which

this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "participant," "person," "principal," and "voluntarily excluded," as used in this clause, are defined in 2 CFR Parts 180 and 1200. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations. "First Tier Covered Transactions" refers to any covered transaction between a grantee or subgrantee of Federal funds and a participant (such as the prime or general contract). "Lower Tier Covered Transactions" refers to any covered transaction under a First Tier Covered Transaction (such as subcontracts). "First Tier Participant" refers to the participant who has entered into a covered transaction with a grantee or subgrantee of Federal funds (such as the prime or general contractor). "Lower Tier Participant" refers any participant who has entered into a covered transaction with a First Tier Participant or other Lower Tier Participants (such as subcontractors and suppliers).

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions exceeding the \$25,000 threshold.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant is responsible for ensuring that its principals are not suspended, debarred, or otherwise ineligible to participate in covered transactions. To verify the eligibility of its principals, as well as the eligibility of any lower tier prospective participants, each participant may, but is not required to, check the Excluded Parties List System website (<https://www.epls.gov/>), which is compiled by the General Services Administration.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the

department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Participants:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in covered transactions by any Federal department or agency

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

XI. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

This provision is applicable to all Federal-aid construction contracts and to all related subcontracts which exceed \$100,000 (49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure

3. The prospective participant also agrees by submitting its bid or proposal that the participant shall require that the language of this certification be included in all lower tier subcontracts, which exceed \$100,000 and that all such recipients shall certify and disclose accordingly

**ATTACHMENT A - EMPLOYMENT AND MATERIALS
PREFERENCE FOR APPALACHIAN DEVELOPMENT
HIGHWAY SYSTEM OR APPALACHIAN LOCAL ACCESS
ROAD CONTRACTS**

This provision is applicable to all Federal-aid projects funded under the Appalachian Regional Development Act of 1965.

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph (1c) shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph (4) below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which the participant estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, the participant shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within one week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph (1c) above.

5. The provisions of 23 CFR 633.207(e) allow the contracting agency to provide a contractual preference for the use of mineral resource materials native to the Appalachian region.

6. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

EXHIBIT J – FEDERAL REQUIREMENTS

Federal laws and regulations that may be applicable to the Work include:

A. Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule)

The "Uniform Administrative Requirements for Agreements and Cooperative Agreements to State and Local Governments (Common Rule), at 49 Code of Federal Regulations, Part 18, except to the extent that other applicable federal requirements (including the provisions of 23 CFR Parts 172 or 633 or 635) are more specific than provisions of Part 18 and therefore supersede such Part 18 provisions. The requirements of 49 CFR 18 include, without limitation: the Local Agency/Contractor shall follow applicable procurement procedures, as required by section 18.36(d); the Local Agency/Contractor shall request and obtain prior CDOT approval of changes to any subcontracts in the manner, and to the extent required by, applicable provisions of section 18.30; the Local Agency/Contractor shall comply with section 18.37 concerning any sub-Agreements; to expedite any CDOT approval, the Local Agency/Contractor's attorney, or other authorized representative, shall also submit a letter to CDOT certifying Local Agency/Contractor compliance with section 18.30 change order procedures, and with 18.36(d) procurement procedures, and with 18.37 sub-Agreement procedures, as applicable; the Local Agency/Contractor shall incorporate the specific contract provisions described in 18.36(i) (which are also deemed incorporated herein) into any subcontract(s) for such services as terms and conditions of those subcontracts.

B. Executive Order 11246

Executive Order 11246 of September 24, 1965 entitled "Equal Employment Opportunity," as amended by Executive Order 11375 of October 13, 1967 and as supplemented in Department of Labor regulations (41 CFR Chapter 60) (All construction contracts awarded in excess of \$10,000 by the Local Agencies and their contractors or the Local Agencies).

C. Copeland "Anti-Kickback" Act

The Copeland "Anti-Kickback" Act (18 U.S.C. 874) as supplemented in Department of Labor regulations (29 CFR Part 3) (All contracts and sub-Agreements for construction or repair).

D. Davis-Bacon Act

The Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (29 CFR Part 5) (Construction contracts in excess of \$2,000 awarded by the Local Agencies and the Local Agencies when required by Federal Agreement program legislation. This act requires that all laborers and mechanics employed by contractors or sub-contractors to work on construction projects financed by federal assistance must be paid wages not less than those established for the locality of the project by the Secretary of Labor).

E. Contract Work Hours and Safety Standards Act

Sections 103 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by Department of Labor regulations (29 CFR Part 5). (Construction contracts awarded by the Local Agency's in excess of \$2,000, and in excess of \$2,500 for other contracts which involve the employment of mechanics or laborers).

F. Clear Air Act

Standards, orders, or requirements issued under section 306 of the Clear Air Act (42 U.S.C. 1857(h), section 508 of the Clean Water Act (33 U.S.C. 1368). Executive Order 11738, and Environmental Protection Agency regulations (40 CFR Part 15) (contracts, subcontracts, and sub-Agreements of amounts in excess of \$100,000).

G. Energy Policy and Conservation Act

Mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (Pub. L. 94-163).

H. OMB Circulars

Office of Management and Budget Circulars A-87, A-21 or A-122, and A-102 or A-110, whichever is applicable.

I. Hatch Act

The Hatch Act (5 USC 1501-1508) and Public Law 95-454 Section 4728. These statutes state that federal funds cannot be used for partisan political purposes of any kind by any person or organization involved in the administration of federally-assisted programs.

J. Nondiscrimination

42 USC 6101 et seq. 42 USC 2000d, 29 USC 794, and implementing regulation, 45 C.F.R. Part 80 et seq. These acts require that no person shall, on the grounds of race, color, national origin, age, or handicap, be excluded from participation in or be subjected to discrimination in any program or activity funded, in whole or part, by federal funds.

K. ADA

The Americans with Disabilities Act (Public Law 101-336; 42 USC 12101, 12102, 12111-12117, 12131-12134, 12141-12150, 12161-12165, 12181-12189, 12201-12213 47 USC 225 and 47 USC 611.

L. Uniform Relocation Assistance and Real Property Acquisition Policies Act

The Uniform Relocation Assistance and Real Property Acquisition Policies Act, as amended (Public Law 91-646, as amended and Public Law 100-17, 101 Stat. 246-256). (If the contractor is acquiring real property and displacing households or businesses in the performance of the Agreement).

M. Drug-Free Workplace Act

The Drug-Free Workplace Act (Public Law 100-690 Title V, subtitle D, 41 USC 701 et seq.).

N. Age Discrimination Act of 1975

The Age Discrimination Act of 1975, 42 U.S.C. Sections 6101 et seq. and its implementing regulation, 45 C.F.R. Part 91; Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794, as amended, and implementing regulation 45 C.F.R. Part 84.

O. 23 C.F.R. Part 172

23 C.F.R. Part 172, concerning "Administration of Engineering and Design Related Contracts".

P. 23 C.F.R Part 633

23 C.F.R Part 633, concerning "Required Contract Provisions for Federal-Aid Construction Contracts".

Q. 23 C.F.R. Part 635

23 C.F.R. Part 635, concerning "Construction and Maintenance Provisions".

R. Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973

Title VI of the Civil Rights Act of 1964 and 162(a) of the Federal Aid Highway Act of 1973. The requirements for which are shown in the Nondiscrimination Provisions, which are attached hereto and made a part hereof.

S. Nondiscrimination Provisions:

In compliance with Title VI of the Civil Rights Act of 1964 and with Section 162(a) of the Federal Aid Highway Act of 1973, the Contractor, for itself, its assignees and successors in interest, agree as follows:

i. Compliance with Regulations

The Contractor will comply with the Regulations of the Department of Transportation relative to nondiscrimination in Federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made a part of this Agreement.

ii. Nondiscrimination

The Contractor, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, mental or physical handicap or national origin in the selection and retention of Subcontractors, including

procurement of materials and leases of equipment. The Contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix C of the Regulations.

iii. Solicitations for Subcontracts, Including Procurement of Materials and Equipment

In all solicitations either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurement of materials or equipment, each potential Subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and the Regulations relative to nondiscrimination on the ground of race, color, sex, mental or physical handicap or national origin.

iv. Information and Reports

The Contractor will provide all information and reports required by the Regulations, or orders and instructions issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the State or the FHWA to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of the Contractor is in the exclusive possession of another who fails or refuses to furnish this information, the Contractor shall so certify to the State, or the FHWA as appropriate and shall set forth what efforts have been made to obtain the information.

v. Sanctions for Noncompliance

In the event of the Contractor's noncompliance with the nondiscrimination provisions of this Agreement, the State shall impose such contract sanctions as it or the FHWA may determine to be appropriate, including, but not limited to: **a.** Withholding of payments to the Contractor under the contract until the Contractor complies, and/or **b.** Cancellation, termination or suspension of the contract, in whole or in part.

T. Incorporation of Provisions §22

The Contractor will include the provisions of paragraphs A through F in every subcontract, including procurement of materials and leases of equipment, unless exempt by the Regulations, orders, or instructions issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as the State or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that, in the event the Contractor becomes involved in, or is threatened with, litigation with a Subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interest of the State and in addition, the Contractor may request the FHWA to enter into such litigation to protect the interests of the United States.

37. EXHIBIT K – SUPPLEMENTAL FEDERAL PROVISIONS

State of Colorado
Supplemental Provisions for
Federally Funded Contracts, Grants, and Purchase Orders
Subject to
The Federal Funding Accountability and Transparency Act of 2006 (FFATA), As Amended
Revised as of 3-20-13

The contract, grant, or purchase order to which these Supplemental Provisions are attached has been funded, in whole or in part, with an Award of Federal funds. In the event of a conflict between the provisions of these Supplemental Provisions, the Special Provisions, the contract or any attachments or exhibits incorporated into and made a part of the contract, the provisions of these Supplemental Provisions shall control.

1. **Definitions.** For the purposes of these Supplemental Provisions, the following terms shall have the meanings ascribed to them below.

1.1. **"Award"** means an award of Federal financial assistance that a non-Federal Entity receives or administers in the form of:

- 1.1.1. Grants;
- 1.1.2. Contracts;
- 1.1.3. Cooperative agreements, which do not include cooperative research and development agreements (CRDA) pursuant to the Federal Technology Transfer Act of 1986, as amended (15 U.S.C. 3710);
- 1.1.4. Loans;
- 1.1.5. Loan Guarantees;
- 1.1.6. Subsidies;
- 1.1.7. Insurance;
- 1.1.8. Food commodities;
- 1.1.9. Direct appropriations;
- 1.1.10. Assessed and voluntary contributions; and
- 1.1.11. Other financial assistance transactions that authorize the expenditure of Federal funds by non-Federal Entities.

Award **does not** include:

- 1.1.12. Technical assistance, which provides services in lieu of money;
- 1.1.13. A transfer of title to Federally-owned property provided in lieu of money; even if the award is called a grant;
- 1.1.14. Any award classified for security purposes; or
- 1.1.15. Any award funded in whole or in part with Recovery funds, as defined in section 1512 of the American Recovery and Reinvestment Act (ARRA) of 2009 (Public Law 111-5).

1.2. **"Contract"** means the contract to which these Supplemental Provisions are attached and includes all Award types in §1.1.1 through 1.1.11 above.

1.3. **"Contractor"** means the party or parties to a Contract funded, in whole or in part, with Federal financial assistance, other than the Prime Recipient, and includes grantees, subgrantees, Subrecipients, and borrowers. For purposes of Transparency Act reporting, Contractor does not include Vendors.

1.4. **"Data Universal Numbering System (DUNS) Number"** means the nine-digit number established and assigned by Dun and Bradstreet, Inc. to uniquely identify a business entity. Dun and Bradstreet's website may be found at: <http://fedgov.dnb.com/webform>.

1.5. **"Entity"** means all of the following as defined at 2 CFR part 25, subpart C;

- 1.5.1. A governmental organization, which is a State, local government, or Indian Tribe;
- 1.5.2. A foreign public entity;
- 1.5.3. A domestic or foreign non-profit organization;

- 1.5.4. A domestic or foreign for-profit organization; and
 - 1.5.5. A Federal agency, but only a Subrecipient under an Award or Subaward to a non-Federal entity.
- 1.6. **"Executive"** means an officer, managing partner or any other employee in a management position.
 - 1.7. **"Federal Award Identification Number (FAIN)"** means an Award number assigned by a Federal agency to a Prime Recipient.
 - 1.8. **"FFATA"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. FFATA, as amended, also is referred to as the "Transparency Act."
 - 1.9. **"Prime Recipient"** means a Colorado State agency or institution of higher education that receives an Award.
 - 1.10. **"Subaward"** means a legal instrument pursuant to which a Prime Recipient of Award funds awards all or a portion of such funds to a Subrecipient, in exchange for the Subrecipient's support in the performance of all or any portion of the substantive project or program for which the Award was granted.
 - 1.11. **"Subrecipient"** means a non-Federal Entity (or a Federal agency under an Award or Subaward to a non-Federal Entity) receiving Federal funds through a Prime Recipient to support the performance of the Federal project or program for which the Federal funds were awarded. A Subrecipient is subject to the terms and conditions of the Federal Award to the Prime Recipient, including program compliance requirements. The term "Subrecipient" includes and may be referred to as Subgrantee.
 - 1.12. **"Subrecipient Parent DUNS Number"** means the subrecipient parent organization's 9-digit Data Universal Numbering System (DUNS) number that appears in the subrecipient's System for Award Management (SAM) profile, if applicable.
 - 1.13. **"Supplemental Provisions"** means these Supplemental Provisions for Federally Funded Contracts, Grants, and Purchase Orders subject to the Federal Funding Accountability and Transparency Act of 2006, As Amended, as may be revised pursuant to ongoing guidance from the relevant Federal or State of Colorado agency or institution of higher education.
 - 1.14. **"System for Award Management (SAM)"** means the Federal repository into which an Entity must enter the information required under the Transparency Act, which may be found at <http://www.sam.gov>.
 - 1.15. **"Total Compensation"** means the cash and noncash dollar value earned by an Executive during the Prime Recipient's or Subrecipient's preceding fiscal year and includes the following:
 - 1.15.1. Salary and bonus;
 - 1.15.2. Awards of stock, stock options, and stock appreciation rights, using the dollar amount recognized for financial statement reporting purposes with respect to the fiscal year in accordance with the Statement of Financial Accounting Standards No. 123 (Revised 2005) (FAS 123R), Shared Based Payments;
 - 1.15.3. Earnings for services under non-equity incentive plans, not including group life, health, hospitalization or medical reimbursement plans that do not discriminate in favor of Executives and are available generally to all salaried employees;
 - 1.15.4. Change in present value of defined benefit and actuarial pension plans;
 - 1.15.5. Above-market earnings on deferred compensation which is not tax-qualified;
 - 1.15.6. Other compensation, if the aggregate value of all such other compensation (e.g. severance, termination payments, value of life insurance paid on behalf of the employee, perquisites or property) for the Executive exceeds \$10,000.
 - 1.16. **"Transparency Act"** means the Federal Funding Accountability and Transparency Act of 2006 (Public Law 109-282), as amended by §6202 of Public Law 110-252. The Transparency Act also is referred to as FFATA.
 - 1.17. **"Vendor"** means a dealer, distributor, merchant or other seller providing property or services required for a project or program funded by an Award. A Vendor is not a Prime Recipient or a Subrecipient and

is not subject to the terms and conditions of the Federal award. Program compliance requirements do not pass through to a Vendor.

2. **Compliance.** Contractor shall comply with all applicable provisions of the Transparency Act and the regulations issued pursuant thereto, including but not limited to these Supplemental Provisions. Any revisions to such provisions or regulations shall automatically become a part of these Supplemental Provisions, without the necessity of either party executing any further instrument. The State of Colorado may provide written notification to Contractor of such revisions, but such notice shall not be a condition precedent to the effectiveness of such revisions.
3. **System for Award Management (SAM) and Data Universal Numbering System (DUNS) Requirements.**
 - 3.1. **SAM.** Contractor shall maintain the currency of its information in SAM until the Contractor submits the final financial report required under the Award or receives final payment, whichever is later. Contractor shall review and update SAM information at least annually after the initial registration, and more frequently if required by changes in its information.
 - 3.2. **DUNS.** Contractor shall provide its DUNS number to its Prime Recipient, and shall update Contractor's information in Dun & Bradstreet, Inc. at least annually after the initial registration, and more frequently if required by changes in Contractor's information.
4. **Total Compensation.** Contractor shall include Total Compensation in SAM for each of its five most highly compensated Executives for the preceding fiscal year if:
 - 4.1. The total Federal funding authorized to date under the Award is \$25,000 or more; and
 - 4.2. In the preceding fiscal year, Contractor received:
 - 4.2.1. 80% or more of its annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.2.2. \$25,000,000 or more in annual gross revenues from Federal procurement contracts and subcontracts and/or Federal financial assistance Awards or Subawards subject to the Transparency Act; and
 - 4.3. The public does not have access to information about the compensation of such Executives through periodic reports filed under section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m(a), 78o(d) or § 6104 of the Internal Revenue Code of 1986.
5. **Reporting.** Contractor shall report data elements to SAM and to the Prime Recipient as required in §7 below if Contractor is a Subrecipient for the Award pursuant to the Transparency Act. No direct payment shall be made to Contractor for providing any reports required under these Supplemental Provisions and the cost of producing such reports shall be included in the Contract price. The reporting requirements in §7 below are based on guidance from the US Office of Management and Budget (OMB), and as such are subject to change at any time by OMB. Any such changes shall be automatically incorporated into this Contract and shall become part of Contractor's obligations under this Contract, as provided in §2 above. The Colorado Office of the State Controller will provide summaries of revised OMB reporting requirements at <http://www.colorado.gov/dpa/dfp/sco/FFATA.htm>.
6. **Effective Date and Dollar Threshold for Reporting.** The effective date of these Supplemental Provisions apply to new Awards as of October 1, 2010. Reporting requirements in §7 below apply to new Awards as of October 1, 2010, if the initial award is \$25,000 or more. If the initial Award is below \$25,000 but subsequent Award modifications result in a total Award of \$25,000 or more, the Award is subject to the reporting requirements as of the date the Award exceeds \$25,000. If the initial Award is \$25,000 or more, but funding is subsequently de-obligated such that the total award amount falls below \$25,000, the Award shall continue to be subject to the reporting requirements.
7. **Subrecipient Reporting Requirements.** If Contractor is a Subrecipient, Contractor shall report as set forth below.

7.1 ToSAM. A Subrecipient shall register in SAM and report the following data elements in SAM *for each* Federal Award Identification Number no later than the end of the month following the month in which the Subaward was made:

7.1.1 Subrecipient DUNS Number;

7.1.2 Subrecipient DUNS Number + 4 if more than one electronic funds transfer (EFT) account;

7.1.3 Subrecipient Parent DUNS Number;

7.1.4 Subrecipient's address, including: Street Address, City, State, Country, Zip + 4, and Congressional District;

7.1.5 Subrecipient's top 5 most highly compensated Executives if the criteria in §4 above are met; and

7.1.6 Subrecipient's Total Compensation of top 5 most highly compensated Executives if criteria in §4 above met.

7.2 To Prime Recipient. A Subrecipient shall report to its Prime Recipient, upon the effective date of the Contract, the following data elements:

7.2.1 Subrecipient's DUNS Number as registered in **SAM**.

7.2.2 Primary Place of Performance Information, including: Street Address, City, State, Country, Zip code + 4, and Congressional District.

8. Exemptions.

8.1. These Supplemental Provisions do not apply to an individual who receives an Award as a natural person, unrelated to any business or non-profit organization he or she may own or operate in his or her name.

8.2 A Contractor with gross income from all sources of less than \$300,000 in the previous tax year is exempt from the requirements to report Subawards and the Total Compensation of its most highly compensated Executives.

8.3 Effective October 1, 2010, "Award" currently means a grant, cooperative agreement, or other arrangement as defined in Section 1.1 of these Special Provisions. On future dates "Award" may include other items to be specified by OMB in policy memoranda available at the OMB Web site; Award also will include other types of Awards subject to the Transparency Act.

8.4 There are no Transparency Act reporting requirements for Vendors.

Event of Default. Failure to comply with these Supplemental Provisions shall constitute an event of default under the Contract and the State of Colorado may terminate the Contract upon 30 days prior written notice if the default remains uncured five calendar days following the termination of the 30 day notice period. This remedy will be in addition to any other remedy available to the State of Colorado under the Contract, at law or in equity.



FORMAL AGENDA ITEM

COUNCIL MEETING DATE: Month/Date/Year (e.g., June 14, 2011)

TO: President and Members of City Council

VIA: Mayor Steve Bach

FROM: **Peter Carey, Chief of Police**

Subject Title: An Ordinance amending Section 206 (Possession of Marijuana) of Part 2 (Other Dangerous Weapons and Substances) of Article 7 (Dangerous Weapons and Substances) of Chapter 9 (Public Offenses) of the Code of the City of Colorado Springs 2001, as amended, pertaining to possession of marijuana at indoor City facilities, and providing penalties for the violation thereof.

SUMMARY:

The City of Colorado Springs has numerous indoor facilities throughout the area that are staffed by employees and visited by the public on a daily basis. With the passing of Colorado Amendment 64, possession of marijuana has become legal in Colorado. With that, Amendment 64 allows employers and property owners the ability to restrict the possession, consumption and display of marijuana in the workplace and on private property. Colorado Amendment 20 **does not** require an employer to accommodate the medical use of marijuana in any work place. Keeping in line with these provisions, we feel it is in the best interest of our employees as well as our citizens to ban the possession of marijuana in all City indoor facilities. The Ordinance defines indoor facilities as “any enclosed building, structure, or facility owned or leased by the City of Colorado Springs.”

PREVIOUS COUNCIL ACTION:

City Council passed Municipal Ordinance 9.7.206: Possession of Marijuana which made it unlawful for any person under the age of twenty one (21) years to possess or openly and publicly display one ounce or less of marijuana.

BACKGROUND:

The Colorado Springs Police Department recognizes that an employee's and citizen's feelings of safety is a crucial part of a thriving and vibrant community. The implementation of this proposed Ordinance Amendment prevents anyone from bringing marijuana into a City facility and ensures community members do not have to associate with individuals in possession of marijuana.

FINANCIAL IMPLICATIONS:

Not applicable.

BOARD/COMMISSION RECOMMENDATION:

Not applicable.

STAKEHOLDER PROCESS:

Not applicable.

ALTERNATIVES:

City Council may choose to approve, deny or modify the attached Ordinance Amendment.

RECOMMENDATION:

Recommend passing the attached City Ordinance Amendment recommendation.

PROPOSED MOTION:

Move approval of the attached Ordinance as presented.

c: Laura Neumann, Chief of Staff
Peter Carey, Chief of Police

Attachments: (examples below)

- Ordinance



Work Session Agenda Item

Council Meeting Date: January 13, 2014

To: President and Members of City Council

cc: Mayor Steve Bach

From: Councilmember Joel Miller

Subject Title: Ordinance Restricting City Council's Use of Eminent Domain

Summary: The proposed ordinance will limit the use of City Council's powers of eminent domain to the acquisition of property only for traditional public uses such as the acquisition of land rights for public streets and highways and other traditional public facilities, such as a water facility.

Background: In 2005, the U.S. Supreme Court ruled in *Kelo vs. City of New London* (see attached) that local governments may use eminent domain to acquire private property for private development if government officials determine that the new private development would benefit the public. With this ruling and additional interpretation of the Fifth Amendment of the Constitution (which provides the following, in part: "...nor shall private property be taken for public use, without just compensation."), the U.S. Supreme Court effectively allows local government to take private property through eminent domain for the benefit of another private party for the development of a commercial use, if the new use is projected to generate a secondary public benefit. It should be noted, though, that the Supreme Court included this statement to their opinion: "We emphasize that nothing in our opinion precludes any State from placing further restrictions on its exercise of the takings power."

In 2006, in response to the Supreme Court's decision, the Colorado General Assembly passed House Bill 1411, which states that any condemning entity must establish with a preponderance of evidence that the taking of private property is for a public use, unless the condemnation is for the eradication of blight, in which case the urban renewal authority must demonstrate that using eminent domain is necessary for the eradication of blight by "clear and convincing evidence."

Many United States cities also strengthened their eminent domain laws in an effort to responsibly govern.

Following are a number of examples of United States Cities with responsible eminent domain language:

- A. **Bosque Farms, New Mexico** prohibits the use of eminent domain for economic development and defines economic development as "any activity to increase tax revenue, tax base, employment or general economic health when that activity does not result in (1) the transfer of public ownership, such as for a road, hospital, or military base; (2) the transfer of land to a private entity that is a common carrier, such as a railroad or utility; or (3) the transfer of property to a private entity when eminent domain will remove a harmful use of the land, such as the removal of public nuisances, removal of structures that are beyond repair or that are unfit for human habitation or use, or acquisition of abandoned property.
- B. **Palm Bay, Florida** prohibits their City Council from ever imposing "its powers of condemnation or eminent domain to acquire property for economic development purposes."
- C. **Fargo, North Dakota** limits its "use of its power of eminent domain, as authorized by local, state or federal law, only to further a public use or public purpose. For purposes of this section, a public use or public purpose does not include public benefits of economic development, including an increase in tax base, tax revenues, employment, or general economic health. Private property

shall not be taken by for the use of, or ownership by, any private individual or entity, unless that property is necessary for conducting a common carrier or utility business.”

- D. **Dana Point, California; Debary, Florida; and Bogota, New Jersey** all placed measures on ballots that prohibited the use of eminent domain for a range of economic development purposes. Election results, in order, for prohibition were as follows: 84%, 78% and 83%.

Recommendation: Colorado Springs property owners are concerned that federal, state, and local law might allow property to be taken by the City under eminent domain and used for private economic development and/or a combination of public and private economic development.

Our country was founded on the rights of life, liberty and property, and as such, as an elected City Councilmember, I respectfully recommend that City Council limit its exercise of the power of eminent domain to traditional public purposes and authorize the taking of private property only in cases in which there is a direct public purpose and essential need, and not for uses in which the public only stands to realize a secondary or indirect benefit. This ordinance would strengthen the rights of Colorado Springs citizens against the taking of their private property.

Proposed Ordinance:

Possible wording of an ordinance follows:

“City Council may exercise the powers of eminent domain or declaration of taking to acquire property only if the city will own, or if the public will have the legal right to use, the property, and the purpose of that use is for the essential needs of the public, and City Council may not exercise the powers of eminent domain or declaration of taking to provide for public or private economic development or incidental public benefit, including an increase in tax base, tax revenues, employment, or general economic health.

Nothing in this ordinance shall be construed to prohibit a taking of private property by City Council, that otherwise complies with applicable law, for the purpose of:

- (a) public ownership or exclusive use of the property by the public, for a public street or highway;
- (b) projects designated for public utility use, including those for which a fee is assessed;
- (c) preventing or mitigating a harmful use of land that constitutes a threat to public health.”

Attachment:

- U.S. Supreme Court decision in Kelo vs. City of New London

Syllabus

NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Timber & Lumber Co.*, 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

KELO ET AL. *v.* CITY OF NEW LONDON ET AL.

CERTIORARI TO THE SUPREME COURT OF CONNECTICUT

No. 04–108. Argued February 22, 2005—Decided June 23, 2005

After approving an integrated development plan designed to revitalize its ailing economy, respondent city, through its development agent, purchased most of the property earmarked for the project from willing sellers, but initiated condemnation proceedings when petitioners, the owners of the rest of the property, refused to sell. Petitioners brought this state-court action claiming, *inter alia*, that the taking of their properties would violate the “public use” restriction in the Fifth Amendment’s Takings Clause. The trial court granted a permanent restraining order prohibiting the taking of the some of the properties, but denying relief as to others. Relying on cases such as *Hawaii Housing Authority v. Midkiff*, 467 U. S. 229, and *Berman v. Parker*, 348 U. S. 26, the Connecticut Supreme Court affirmed in part and reversed in part, upholding all of the proposed takings.

Held: The city’s proposed disposition of petitioners’ property qualifies as a “public use” within the meaning of the Takings Clause. Pp. 6–20.

(a) Though the city could not take petitioners’ land simply to confer a private benefit on a particular private party, see, *e.g.*, *Midkiff*, 467 U. S., at 245, the takings at issue here would be executed pursuant to a carefully considered development plan, which was not adopted “to benefit a particular class of identifiable individuals,” *ibid.* Moreover, while the city is not planning to open the condemned land—at least not in its entirety—to use by the general public, this “Court long ago rejected any literal requirement that condemned property be put into use for the . . . public.” *Id.*, at 244. Rather, it has embraced the broader and more natural interpretation of public use as “public purpose.” See, *e.g.*, *Fallbrook Irrigation Dist. v. Bradley*, 164 U. S. 112, 158–164. Without exception, the Court has defined that concept broadly, reflecting its longstanding policy of deference to legislative judgments as to what public needs justify the use of the takings

Syllabus

power. *Berman*, 348 U. S. 26; *Midkiff*, 467 U. S. 229; *Ruckelshaus v. Monsanto Co.*, 467 U. S. 986. Pp. 6–13.

(b) The city’s determination that the area at issue was sufficiently distressed to justify a program of economic rejuvenation is entitled to deference. The city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue. As with other exercises in urban planning and development, the city is trying to coordinate a variety of commercial, residential, and recreational land uses, with the hope that they will form a whole greater than the sum of its parts. To effectuate this plan, the city has invoked a state statute that specifically authorizes the use of eminent domain to promote economic development. Given the plan’s comprehensive character, the thorough deliberation that preceded its adoption, and the limited scope of this Court’s review in such cases, it is appropriate here, as it was in *Berman*, to resolve the challenges of the individual owners, not on a piecemeal basis, but rather in light of the entire plan. Because that plan unquestionably serves a public purpose, the takings challenged here satisfy the Fifth Amendment. P. 13.

(c) Petitioners’ proposal that the Court adopt a new bright-line rule that economic development does not qualify as a public use is supported by neither precedent nor logic. Promoting economic development is a traditional and long accepted governmental function, and there is no principled way of distinguishing it from the other public purposes the Court has recognized. See, *e.g.*, *Berman*, 348 U. S., at 24. Also rejected is petitioners’ argument that for takings of this kind the Court should require a “reasonable certainty” that the expected public benefits will actually accrue. Such a rule would represent an even greater departure from the Court’s precedent. *E.g.*, *Midkiff*, 467 U. S., at 242. The disadvantages of a heightened form of review are especially pronounced in this type of case, where orderly implementation of a comprehensive plan requires all interested parties’ legal rights to be established before new construction can commence. The Court declines to second-guess the wisdom of the means the city has selected to effectuate its plan. *Berman*, 348 U. S., at 26. Pp. 13–20.

268 Conn. 1, 843 A. 2d 500, affirmed.

STEVENS, J., delivered the opinion of the Court, in which KENNEDY, SOUTER, GINSBURG, and BREYER, JJ., joined. KENNEDY, J., filed a concurring opinion. O’CONNOR, J., filed a dissenting opinion, in which REHNQUIST, C. J., and SCALIA and THOMAS, JJ., joined. THOMAS, J., filed a dissenting opinion.